



HM Government

United Kingdom Labour Market Enforcement Strategy - Introductory Report

1 April 2016 - 31 March 2017

Director of Labour Market Enforcement

David Metcalf

Presented to Parliament pursuant to Section 5 (1) of the Immigration Act 2016

July 2017



© Crown copyright 2017

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at www.gov.uk/government/publications

Any enquiries regarding this publication should be sent to us at directorsoffice@lme.gsi.gov.uk

Print ISBN 9781474148474

Web ISBN 9781474148481

ID 14071703 07/17

Printed on paper containing 75% recycled fibre content minimum

Printed in the UK by the Williams Lea Group on behalf of the Controller of Her Majesty's Stationery Office

Foreword

I am honoured to have been appointed the first Director of Labour Market Enforcement. I have taken a special interest in compliance and enforcement in three roles. First, as an academic. Second, as a founder member of the Low Pay Commission (1997-2007), which recommended the level of the National Minimum Wage. Third, as Chair of the Migration Advisory Committee (2007-16).

My intention is to build on the excellent work of the three main bodies and other stakeholders. The three bodies are: National Minimum/Living Wage Enforcement Teams in HMRC; the Gangmasters and Labour Abuse Authority (GLAA) which presently licences labour providers in farming, food processing and shellfish gathering sectors; Employment Agency Standards (EAS) Inspectorate which enforces employment agency regulations. Other stakeholders include: the Independent Anti-Slavery Commissioner; Health and Safety Executive; Police; local authorities; Home Office Immigration Enforcement teams; and The Insolvency Service.

The 2016 Immigration Act requires the Director to submit a strategy for enforcement before the beginning of the financial year, and places a duty on the Secretary of State to lay the strategy before Parliament once they have approved it. This introductory strategy report fulfils the Director's obligation. I was only appointed on 1 January 2017. In order to produce a fully fledged enforcement strategy there must be an extensive consultation process. The consultation will involve the bodies above plus many other stakeholders including: Non-Government Organisations (NGO); unions; employer bodies; and trade associations. Evidence from abroad is also informative. The complete initial strategy is to be published in the spring of the 2018/19 financial year.

Until recently the enforcement of statutory employment protection provisions was mainly via Employment Tribunals (ETs) (Labour Courts) enforcing individual rights. These cover, for example, unfair dismissal, redundancy and discrimination. As recently as 2010/11 the ETs heard over 200,000 claims. A fee to bring a claim was introduced in 2012. Since then the number of cases has fallen, standing at 83,000 in 2015/16.

By contrast, the enforcement activity by the statutory bodies (which cover different issues to the ETs) has grown. For example, the number of workers from whom HMRC got NMW wage arrears paid more than doubled from 2014/15 to 2015/16 to 58,000 (MoJ, 2016).

William Brown, Cambridge University Professor of Employment Relations, recently wrote:

"The employment conditions of the UK's labour force have become increasingly vulnerable to competitive pressures. The consequences in terms of pay, job security and conditions of employment, have been worst for the weakest employees".

Very thorough investigative journalism for both newspapers and TV confirms this. As the balance of enforcement activity tilts away from the ETs towards the statutory bodies it is crucial that such vulnerable workers are protected, particularly at the modern slavery end of the non-compliance spectrum. This is a central task for my spring enforcement strategy document. This introductory strategy report covers four topics:

- the work of the three main bodies
- role of the Director of Labour Market Enforcement
- evidence on non-compliance from both published and intelligence sources
- issues for consultation over the coming months that will be covered in the strategy

This last item is crucial. The issues include (this is not a complete list): development of the intelligence hub; distribution and level of enforcement resources; case for and against more joint working; how to raise awareness of the regulations; use of the new offence linked to LME Undertakings and Orders. For the GLAA there are issues around licensing and use of their new powers. For HMRC there is the key question of the balance between getting money owed to individual workers, naming and shaming, fines and prosecutions.

I have already met: officials from the three main bodies; BEIS and Home Office Ministers and officials with enforcement and intelligence responsibilities; Matthew Taylor, the Independent Anti-Slavery Commissioner and the Care Quality Commission. In addition I engaged with stakeholders at two major round table events in January (attendees detailed in Appendix B) and my office launched a stakeholder survey prior to my arrival.

Promoting fuller compliance with labour market regulations is not a task that can be completed overnight. The right level and distribution of enforcement resources is required. The recent boost to resources has permitted greater activity by the bodies. The deterrent impact of the new offence under the Labour Market Enforcement: Undertakings and Orders legislation will be gradual. The new police-type powers for the GLAA are important but are in the process of being introduced. The development of the intelligence hub in my secretariat will play an important role, particularly in joint working among the bodies. The spring strategy will describe the work of the hub – as it comes more fully on stream – in greater detail. Proper enforcement requires vigilance over the long run.

In my previous job as Chair of the Migration Advisory Committee I wrote: “The flexible labour market should be buttressed by thorough and sustained enforcement of minimum labour standards”. Over the coming months I look forward to meeting the very many stakeholders who have views on these and other enforcement matters. Together, we will be able to produce a strategy that protects vulnerable workers, boosts compliance and ensures that the large majority of law-abiding firms are not undercut by the non-compliant.

I wish to record my thanks to our small secretariat: Tim Harrison, Michael Flynn, Karl Bainbridge, Tracey Affat, Rashmi Panigrahi and Katherine Piedrahita. They have: effectively set up the Director’s office; established the embryonic Intelligence Hub; forged a network of links with stakeholders; and contributed much to this initial report.



Professor Sir David Metcalf CBE

Director of Labour Market Enforcement

To note: This Introductory Report was first submitted to the Home Secretary and the Secretary of State for Business, Energy and Industrial Strategy on 28th March 2017.

Contents

FOREWORD	3
Contents	5
Executive Summary	8
Introduction	8
Enforcement Bodies (Chapter 1)	8
HMRC NMW/NLW	9
GLAA	9
Employment Agency Standards (EAS).....	10
Other stakeholders.....	10
Role of the Director of Labour Market Enforcement (Chapter 2).....	10
Immigration Act 2016 and remit of Director	10
Labour market non-compliance	11
Evidence on non-compliance (Chapter 3)	12
Nature and scale of non-compliance	12
Unreported labour market exploitation.....	13
Issues for consultation to develop the autumn 2017 strategy (Chapter 4)	14
(i) Intelligence Hub	14
(ii) Issues common to the enforcement bodies	15
(iii) Specific issues for the enforcement bodies.....	16
Chapter 1	17
Enforcement Bodies and Other Stakeholders.....	17
1.1 Introduction	17
1.2 Overview of the three main enforcement bodies.....	18
1.3 HM Revenue & Customs - National Minimum Wage and National Living Wage	20

1.4 Gangmasters and Labour Abuse Authority (GLAA)	22
1.5 Employment Agency Standards Inspectorate (EAS).....	25
1.6 Other Stakeholders	27
Chapter 2	30
Role of the Director of Labour Market Enforcement.....	30
2.1 Immigration Act 2016 and activity January-March 2017	30
2.2 The remit of the Director.....	32
2.3 Labour market non-compliance	33
Chapter 3	35
Evidence on non-compliance	35
3.1 Information sources.....	35
3.2 Brief overview of UK business and labour market.....	36
3.3 Nature and scale of non-compliance	36
Box 2: HMRC NMW/NLW Case Study	
Box 3: GLAA Case Study	
Box 4: EAS Case Study	
Enforcement Activity	41
Box 4: How are risks managed?.....	
3.4 Unreported labour market exploitation.....	50
3.5 Concluding comments.....	51
Chapter 4	52
Issues for consultation → Strategy	52
4.1 Intelligence Hub	52
4.2 Overarching issues for the enforcement bodies.....	57
4.3 Specific Issues for the enforcement bodies	65

4.4 Consultation	70
Annex A	72
Key Statistics: Further Details	72
Contents.....	72
A.1 Apprenticeship Pay Survey	73
A.2 Enforcement Activity	75
Source: EAS enforcement data	80
Annex B	81
Stakeholder Roundtable Attendees – 24/25 January 2017.....	81
References	82

Executive Summary

To note: Data and statistics referenced in this report are correct as of time of writing, February 2017.

Introduction

The Immigration Act 2016 introduced legislation to *“improve the effectiveness of the enforcement of certain employment rights to prevent non-compliance and the exploitation of vulnerable workers, via an intelligence-led, targeted approach”* (Home Office, 2016).

This resulted in the:

- appointment of a new Director of Labour Market Enforcement to set the strategic priorities for labour market enforcement;
- creation of a new undertaking and enforcement order regime, with an associated criminal offence to tackle breaches of the law by employers; and
- transformation of the Gangmasters Licensing Authority (GLA) into the Gangmasters and Labour Abuse Authority (GLAA), with a broader remit and stronger powers to deal with labour exploitation across the economy.

This report focuses primarily on the first of these: the work of the Director of Labour Market Enforcement. This will focus on issues around the minimum wage; licensing of labour providers (gangmasters); operation of recruitment agencies; and tackling modern slavery. My formal remit therefore is to consider the work carried out by the three principal labour market enforcement bodies: National Minimum/Living Wage Enforcement Teams in HMRC (HMRC NMW/NLW), the GLA/GLAA and Employment Agency Standards Inspectorate (EAS). In relation to modern slavery offences involving the exploitation of workers, I will also want to consider indirectly the work of other bodies such as the National Crime Agency (NCA) and the police.

This introductory strategy report sets the scene for a full consultation to be carried out in summer 2017 and the delivery of my first full strategy in spring 2018. In doing so this report examines the work of the three enforcement bodies, the role of the Director, an overview of the available evidence on the scale and nature of labour market non-compliance, before setting out the areas on which I intend to consult.

Enforcement Bodies (Chapter 1)

The work of the enforcement bodies is fully described in Chapter 1.

The three bodies differ greatly in remit, resourcing and scope:

- HMRC enforces the National Living Wage (NLW) and National Minimum Wage (NMW). In 2016-17 its enforcement budget was £20m and it had 363 staff. Its scope is the 2million workers covered by the NMW/NLW. In 2015-16 it had 2,667 cases.
- GLAA licenses gangmasters in farming, food processing and shellfish gathering sectors. Its 2016-17 budget was £4.8m and employed 70 staff. There are around 1,000 licence holders supplying 0.46m workers. It took 335 cases in 2015-16.

- EAS enforces regulations covering employment agencies. In 2016-17 its budget was £0.5m and it had 11 staff. There are 18,000 employment agencies with totalling over one million workers. In 2015-16 it took 924 cases.

HMRC NMW/NLW

HMRC seeks to recover arrears of wages for workers and impose civil penalties on employers for NMW/NLW breaches, responding to every complaint received directly or referred from the advisory, conciliation and arbitration service (Acas) helpline. The allegations are triaged and investigated as appropriate. As well as reacting to individual complaints, NMW/NLW officers also conduct proactive risk-based enforcement.

From 1 April 2016, the calculation of minimum wage underpayment penalties was increased by BEIS from 100% to 200% of arrears so increasing the deterrent for employers. The penalty is reduced by half if the unpaid wages and the penalty are paid within 14 days.

Employers who break NMW or NLW law and owe over £100 in wages are “named” as part of the BEIS scheme introduced in 2011. The naming scheme is intended to have both reputational and financial consequences for employers, acting as a deterrent for employers and increasing compliance. It is envisaged that raising awareness of minimum/living wage enforcement in this way could also encourage more workers who have been underpaid to come forward.

Where there is a wider public interest, or in the case of employers who are persistently non-compliant or who refuse to cooperate, HMRC may refer cases for criminal prosecution to the Crown Prosecution Service (CPS), who will consider the evidence provided and determine whether it is in the public interest to prosecute.

In 2015/16, HMRC identified pay arrears in excess of £10m for over 58,000 workers. This was three times the arrears identified in the previous year. In 2016/2017, four employers were prosecuted for non-compliance with NMW/NLW regulations.

GLAA

The GLAA was initially established as the Gangmasters Licensing Authority in 2004. Its task up to 2016 was to license gangmasters supplying labour to agriculture, horticulture, food processing and the shellfish industry. In 2015-16, 142 new licences were granted and 9 refused. 14 gangmasters - supplying 2,600 workers - had their licence revoked for breaching licencing standards. Examples of breaches include: not paying correct tax to HMRC or not paying the NMW/NLW.

The Immigration Act 2016 introduced changes to the work of the GLAA. Whilst it retains its licensing and regulatory functions it also has a much broader role addressing labour exploitation across the entire market. The body was rebranded as Gangmasters and Labour Abuse Authority to reflect its new remit.

This new GLAA activity will be carried out by Labour Abuse Prevention Officers (LAPOs). They will be able to take immediate and effective action against rogue employers. LAPOs will have the power to: investigate modern slavery where it relates to labour abuse and

other labour market offences; arrest suspects; to enter premises where they have a reasonable belief that labour market offences are being committed; to search and seize evidence of breaches of labour market regulations. GLAA intend to focus on the more serious cases where multiple labour market offences have been committed. Routine cases will continue to be dealt with by other enforcement bodies.

Employment Agency Standards (EAS)

EAS work closely with employment agencies, hirers and work seekers to ensure compliance with employment rights, particularly for vulnerable agency workers, and to ensure that everyone who uses the services of a private agency to find work is treated fairly.

Examples of offences investigated by EAS include placing false advertisement for jobs, employment businesses failing to pay wages to workers and providing additional services to work-seekers for a fee before providing any work-finding services.

The EAS inspectors will initially make contact with the agency where a breach has been reported, and inform the agency of legislation requirements and the obligation to comply. Where necessary, EAS inspectors will visit the agency in person. In extreme cases, EAS can seek prosecution of an agency. The purpose of enforcement is to encourage and sustain compliance with the legislation.

As well as sharing intelligence where appropriate with other enforcing bodies, EAS participate in joint working operations with organisations such as GLAA, HMRC NMW/NLW, Immigration Enforcement, and the Health and Safety Executive to ensure that illegal or exploitative behaviour is effectively targeted. EAS have also worked closely with the Pensions Regulator.

Other stakeholders

There are many other stakeholders connected to labour market enforcement in the UK. Government organisations include:

- Modern slavery: organisations here include the Prime Minister's Modern Slavery taskforce and National Threat Group and the Independent Anti-Slavery Commissioner
- National Crime Agency
- Police Forces
- Home Office Immigration Enforcement
- Health and Safety Executive
- Local Authorities
- The Insolvency Service

Role of the Director of Labour Market Enforcement (Chapter 2)

Immigration Act 2016 and remit of Director

The Immigration Act 2016 provided for the appointment of a Director of Labour Market Enforcement to bring together a coherent assessment of the extent of labour market exploitation, identifying routes to tackle exploitation and harnessing the strength of the three main enforcement bodies.

Broadly, my role is:

- (i) to produce an annual labour market enforcement strategy, endorsed by BEIS and Home Office Secretaries of State, to guide operations of the three main enforcement bodies;
- (ii) to develop the intelligence hub;
- (iii) and to write an annual report setting out for Ministers how, collectively, the enforcement bodies performed relative to the Ministerially-agreed strategy.

I intend to consult widely in summer 2017 with a view to delivering my first full strategy in spring 2018.

Much of the recent enforcement model, particularly in respect of HMRC NMW/NLW and EAS, was predicated on responding to complaints. This work remains important, but the enforcement bodies are now adopting a broader based enforcement model which looks to expand and optimise the use of intelligence from wider sources to expose cases of hitherto hidden exploitation.

My remit stretches across the whole labour market, covering direct employment as well as labour providers. It covers the entire spectrum of non-compliance, from accidental infringement to serious criminality. I will seek to build on the excellent work of the three main enforcement bodies.

A key early task is to develop an Intelligence Hub. The Immigration Act 2016 gave the Director, the three enforcement bodies and other institutions the power to routinely share data and intelligence, formalising current information sharing practices to a certain extent. The Hub will provide central co-ordination for information and data to help me identify trends and patterns in areas of the labour market where workers are at risk of exploitation.

Labour market non-compliance

Labour market non-compliance can range from a basic lack of understanding and application of labour rights and regulations through to criminal exploitation on a large scale which goes beyond worker exploitation.

Some examples of the sort of mistreatment workers can face and the span of illegal behaviour by employers and employment operatives include:

- agencies charging their workers fees for finding work or withholding payment of wages
- facilities, including housing and transport, and working conditions provided for workers, are unsanitary and unsafe
- employers deliberately paying employees below NMW/NLW or requiring long hours above the lawful maximum
- employers deducting pay for items such as uniforms and the remaining wages for employees being below NMW/NLW

- employers withholding workers' passports and other identity documents
- employers and agencies incorrectly treating workers as self-employed with the intention of evading national insurance, PAYE and other financial obligations
- workers' holiday pay being withheld
- physical and mental mistreatment

For direct employment the main risk is non-compliance with the NMW/NLW. For labour providers, the main exploitation risks are non-compliance with the NMW/NLW wage, unlawful deductions for services such as transport and charging fees for finding jobs. With gangmasters and employment/recruitment agencies the employment relationship becomes less direct: who is responsible for working conditions and correct pay?

Evidence on non-compliance (Chapter 3)

Most firms, I believe, are compliant with labour market regulations. In order to protect these compliant firms and their workers it is vital that non-compliance is minimised.

Nature and scale of non-compliance

There is a broad spectrum of non-compliance offences in the labour market. Many of the cases and breaches reported by EAS and HMRC NMW/NLW are at the lower end of the spectrum with many of the cases probably resulting from error or a misrepresentation rather than intended exploitation.

Just over 40 per cent of HMRC NMW/NLW cases in 2015/16 were for arrears of £500 or less, with an average of around £90 per worker. However around one in six cases involve arrears of over £5,000. This can mean high arrears for one victim or a large number of victims with smaller arrears. These cases average almost £179 per worker.

EAS cover various offences ranging from issues around terms and conditions to obstruction of EAS enforcement powers. The most common breaches are around withholding payment, notification of charges and terms, agreement to terms and provision of information.

GLAA regulations include a number of important protections for workers. Some of the most common allegations are around having no GLAA licence; not paying the minimum wage; physical and mental mistreatment; withholding wages; and fees for additional services.

At the criminal end of the spectrum, serious non-compliance includes activities of Organised Crime Groups (OCGs) connected to crimes such as illegal immigration, illegal working, trafficking and slavery, trade in prohibited goods and tax evasion. There are many bodies involved in the identification and prosecution of these crime types.

Non-compliance is unfair to compliant businesses. Serious non-compliance (as against inadvertent non-compliance) is typically driven by financial gain. This, in turn, drives some compliant firms to become non-compliant.

The sectors commonly linked with non-compliance such as care, cleaning, agriculture, construction, food processing and hospitality are regularly under pressure to cut costs. Often this is associated with sub-contracting and squeezed profit margins. In some cases

this spills over to false self-employment and tax evasion. Our flexible labour market has served us well, but it is vital that minimum labour standards are properly enforced.

In April 2016 it was estimated that, overall, there were 362,000 jobs paying less than the NMW or NLW. This is equivalent to 1.3 per cent of all UK employee jobs or 19 per cent of those paid at or below NMW and NLW rates. It should be noted though that not all these jobs are non-compliant. There are some legitimate reasons to pay below the NMW/NLW such as where the employer provides accommodation.

Recently HMRC NMW/NLW and EAS have both seen a marked shift towards cases resulting from targeted enforcement. This stems from an increase in the number of trained compliance officers, plus HMRC has also seen a decline in the volume of complaints.

In 2015/6 for HMRC-NMW the top three sectors for the number of cases where arrears were identified were: accommodation and food services; other service activities which includes hairdressing and beauty; and the wholesale and retail trade. A recent focus on the health and social care sectors has resulted in a major boost in the number of cases with arrears.

For EAS the top three sectors for breaches were industrial, entertainment and education. In the latter two breaches increased tenfold in 2015-16 compared to the previous year, many of these were by two or three agencies and followed a Facebook campaign.

Unreported labour market exploitation

Enforcement primarily focuses on complaint or allegation-led interventions at present. Intelligence indicates that the key statistics presented within this report may well be an understatement of the real level of non-compliance. This will be reported upon further in spring 2018.

We have seen intelligence which shows some of the reasons why affected workers may not raise complaints, for example they are:

- unaware of the rules (language/cultural barriers can exacerbate this)
- in fear of losing their job
- unsure of their right to work in the United Kingdom
- under duress
- happy with their pay and conditions

At the more serious end of the compliance spectrum, employers use debt bondage and threat to ensure their operation remains out of sight to law enforcement. Workers either leave of their own accord or if they complain they are told they can be replaced. This illustrates the difficult position many people find themselves in. These sorts of issues are receiving increased media coverage and investigation.

Overall, Chapter 3 highlights the challenge ahead in terms of identifying better evidence and improving our understanding of labour market non-compliance in the UK. Currently, there exist a number of sources of information, but none provides the complete picture to inform our enforcement strategy.

Central to our work in this area will be building the Intelligence Hub and seeking to maximise the use of the information streams that the hub will be aiming to capture. To this end we will be relying on information from a variety of stakeholders in both the public and private sectors. We will also want to work closely with academics and research bodies specialising in this area.

What should be understood, however, is that there is unlikely to be an instant 'silver bullet' to overcome these data gaps. It will be about finding new sources of information and data and making better, collective use of existing ones. Initially, we will report on progress in our spring strategy document, but this will inevitably be a longer-term piece of work for future strategy documents. It will also feature strongly in my retrospective annual assessments of the effectiveness of labour market enforcement strategy.

Issues for consultation to develop the autumn 2017 strategy (Chapter 4)

Three broad areas identified for extensive consultation in order to produce a full strategy for the enforcement bodies in the spring are:

- (i) development of the labour market enforcement intelligence hub
- (ii) issues common to all three enforcement bodies
- (iii) issues particular to the bodies

I intend to launch the consultation in summer 2017. I would like to involve and hear from as many stakeholders as possible. The information and evidence we receive will be vital to developing my first full strategy in spring 2018.

I shall be writing directly to key stakeholders and publicising further details of the consultation through a variety of media, including through our own web site. As part of this I shall be very keen to undertake visits and meetings across the UK to learn at first-hand how we might best tackle some of the labour market enforcement challenges we are currently facing.

(i) Intelligence Hub

There is already a great deal of informal co-operation and information sharing among the three enforcement bodies. But the government concluded that this process should be formalised and extended. The 2016 Immigration Act paved the way for an Intelligence Hub that will receive, process and produce information and intelligence assets relating to non-compliance within the labour market.

The Intelligence Hub will be developed over three phases:

- phase one, since mid-2016 we have set up a shadow hub. Analysts from my secretariat worked on an initial strategic intelligence report; developed contacts with key law enforcement partners; developed data sharing processes; and supported work on the legal gateways.
- phase two, during 2017 we are seeking to recruit more analytical and intelligence resources. This will ensure we have the right balance of staff to analyse the information and intelligence being gathered, crucial to assessing the scale and nature of non-compliance

- phase three, from 2018, will then see a fully functioning Intelligence Hub come on stream. This will have a number on potential outputs. Such outputs include: reports on non-compliance trends broken down by sector and region; highlighting gaps in intelligence and, by implication, what further intelligence should be collected; overview of scale and nature of non-compliance to improve future iterations of the annual strategy

The intelligence colleagues in the secretariat will consult with their counterparts in the three enforcement bodies and with other stakeholders such as the National Crime Agency and Local Authorities to ensure the Hub develops to help minimise the depth and scale of non-compliance.

(ii) Issues common to the enforcement bodies

There are two sets of issues which are common to all three enforcement bodies. First, **how best to understand and unearth a more complete picture of non-compliance.** This includes the following topics:

- ***raising awareness and communications.*** There are many routes for a worker to raise a concern and receive advice or redress. These include the Acas helpline, Citizens Advice, trade bodies and direct contact with the three bodies. The number and diversity of channels may lead to some confusion and the role of the different organisations may not be clear to all workers. Further, there is a group of workers who are not reporting incidents for a myriad of reasons. The worker may be unaware of the regulations, in fear of losing their job, under duress or benefitting from the job despite breaches. Such workers require a voice.
- ***balance between individual complaints (reactive) or proactive targeting.*** The enforcement bodies deal with all allegations and complaints they receive and need to uncover more abuse proactively, through developing intelligence and sharing among stakeholders.
- ***the new regime of labour market enforcement undertakings and orders.*** The 2016 Immigration Act made it easier for law enforcement to deal with employers who subject their workers to more serious forms of non-compliance by “deliberately, persistently, and brazenly committing breaches of labour law and failing to take remedial action”. A new type of enforcement order is supported by a criminal offence for non-compliance. Where there is a reasonable belief that a trigger labour market offence has been committed (e.g. using an unlicensed gangmaster), the enforcement bodies have the power to request a business to enter an undertaking to take steps to prevent further offending. Failure to comply can lead to a prison term of up to two years.

Second, **joint working between the bodies** raises a number of issues:

- ***recognition of the potential benefits of joint working*** which include stronger accountability, reduced duplication and highlighting gaps in the current enforcement regimes
- ***joint working to tackle the hidden economy.*** HMRC lead the work here. They work jointly with many stakeholders including Trading Standards and Local Authorities. Although the hidden economy is mainly a tax issue it will often also involve labour market non-compliance matters. A related issue is joint working to ensure transparency in supply chains

- **evaluating the impact and effectiveness of enforcement activity** and understanding better the effect of different types of interventions, from raising awareness to pursuing prosecutions. There is also a question as to how government, business and third sector organisations can better work together to help prevent non-compliance in the first place.
- **size and distribution of enforcement resources.** Do the enforcement activities, as currently undertaken, represent the best value for money? I.e. does the present distribution minimise the scale and depth of non-compliance?

(iii) Specific issues for the enforcement bodies

For HMRC there are two main issues for consultation:

- **the balance along the penalty spectrum.** HMRC has, essentially, five potential levers to enforce the NMW/ NLW:
 - getting the wage arrears paid to the worker
 - civil penalties of up to 200 percent of the arrears owed per worker up to £20,000
 - naming scheme under which BEIS will name all employers who owe their workers over £100
 - the new regime of labour market enforcement undertakings and orders
 - criminal investigations possibly resulting in a prosecution by the CPS
- **the balance between enforcing the National Living Wage (NLW) and promoting joint work.** Joint work includes shared intelligence and joint operations. Such work is vital for the future. But HMRC faces a formidable challenge enforcing the NLW. Coverage of the NMW/NLW in the labour force will rise from 5 percent in 2015 (with the national minimum wage) to almost 14 percent in 2020. I will discuss with HMRC and other interested parties the balance between extra joint work and properly enforcing the NLW.

For the GLAA are also two main issues for consultation:

- **is there a case for extending licensing of labour suppliers (gangmasters) to other sectors such as construction and social care?** Or alternatively to tighten licensing in horticulture? Stakeholders have diametrically opposed views on this question. Consultation on this issue will also examine weaker alternatives to licensing such as certification and registration.
- **the remit and investigatory powers of the GLAA has been extended.** The new role of Labour Abuse Prevention Officers (LAPOs) was created specifically to tackle serious labour market abuse offences. LAPOs will have the power to: investigate modern slavery where it relates to labour abuse and other labour market offences; arrest suspects; to enter premises where they have a reasonable belief that labour market offences are being committed; to search and seize evidence of breaches of labour market regulations. LAPO activity will form a central plank of the spring strategy and I shall consult the GLAA and other interested stakeholders, including NGOs, about their role.

Chapter 1

Enforcement Bodies and Other Stakeholders

1.1 Introduction

The Immigration Act 2016 set out those areas of labour market compliance that the work of the Director should focus on, namely: around the minimum wage; licensing of labour providers (gangmasters); operation of recruitment agencies; and tackling modern slavery. My remit therefore is to consider the work carried out by the three principal labour market enforcement bodies: National Minimum/Living Wage Enforcement Teams in HMRC (HMRC NMW/NLW), Gangmasters and Labour Abuse Authority (GLAA) and Employment Agency Standards Inspectorate (EAS), and the work of other bodies such as the National Crime Agency (NCA) and the police in relation to modern slavery offences involving the exploitation of workers.

However, before doing so, it is helpful to set out here first some information about the three principal labour market enforcement bodies: their particular remit(s); how they are resourced; recent policy developments and areas of joint working. This begins below with an overview of the three bodies, before discussing each in turn in greater detail.

The final part of the chapter focuses on work done by some of the other key stakeholders in the public sector in tackling non-compliance in the labour market such as the Health and Safety Executive, Police Forces and Local Authorities. Whilst not an exhaustive list, this does begin to demonstrate the breadth and diversity of stakeholders operating directly and indirectly in the area of labour market enforcement.

1.2 Overview of the three main enforcement bodies

The three bodies differ greatly in remit, resourcing and scope, as set out in Table 1 below. This section outlines the main objectives of each body and the current practices for ensuring these are met.

Table 1: Summary Statistics for Enforcement Bodies

Enforcement Body (Responsible Department)	2016/17 funding	2016/17 FTE staff	Scope	Geographical locations covered	2015/16 cases
HMRC NMW/NLW (BEIS for NMW/NLW policy)	£20m	363	2 million workers (NMW and NLW)	United Kingdom.	2,667
GLAA (Home Office)	£4.8m	70	996 licence holders 0.46m workers	England, Scotland, Wales and by order in Northern Ireland.	335
EAS (BEIS)	£0.5m	11	18,000 agencies 1.1m workers	England, Wales and Scotland.	924

Note: GLAA cases only include tasked cases – which includes application and compliance inspections and enforcement cases. GLAA funding includes £100k provided by the Northern Ireland Executive for enforcement activity in Northern Ireland. While the GLAA operates in Northern Ireland, it does so on behalf of the Department for Environment, Food and Rural Affairs. Employment is reserved to the UK Government in respect of Scotland, although criminal justice including modern slavery offences and policing are devolved. Therefore the GLAA's new police style powers will be confined to England and Wales. EAS and HMRC-NMW cases include all complaints and targeted activity. The Department for the Economy in Belfast is responsible for enforcing employment agency legislation in Northern Ireland.

A fundamental issue for labour market enforcement is being clear about the employment status of the individuals covered by the areas of employment law which the three bodies must uphold. This will determine the appropriate employment rights to which workers, employees or the self-employed are entitled. The differences between these three groups – workers, employees and the self-employed – are summarised in Box 1 below. Often there can be confusion, for individuals and employers alike, between workers and employees: essentially, all employees are workers, but an employee has extra employment rights and responsibilities that do not apply to workers who are not employees. However, with the emergence of modern employment practices, currently under review by Matthew Taylor, there is confusion too in terms of entitlements for the self-employed. This is an issue we also consider in this report.

Box 1: Summary of three main employment statuses

Employee	Worker	Self-employed
<p>Established as employee where it can be determined that a contract of employment exists.</p> <p>All employees are workers and have all the rights listed in the next column for workers, but an employee has extra employment rights and responsibilities that do not apply to workers who are not employees. These additional rights and responsibilities include:</p> <ul style="list-style-type: none"> • Statutory Sick Pay • A right to written particulars (terms and conditions of employment); • A right to an itemised pay statement; • The right to request flexible working; • The right to time off for dependants (unpaid); • Statutory maternity, paternity and adoption leave; • Full TUPE rights (transfer of employment rights following business takeovers); • Protection against unfair dismissal; • The right to notice of termination of employment; • The right to a redundancy payment; 	<p>Established as worker where a contract of employment or contract to personally do work exists. Rights include:</p> <ul style="list-style-type: none"> • Entitlement to NMW/NLW; • Protection from unlawful deductions from salary; • Health and safety protections; • Paid annual leave and rest breaks; • The right to claim breach of contract (wrongful dismissal); • Whistleblowing protections; • The right to not work more than 48 hours on average per week or to opt out of this right if they choose; • Protection against unlawful discrimination; • The right to not be treated less favourably if they work part-time <p>Workers may also be entitled to:</p> <ul style="list-style-type: none"> • Statutory Sick, Maternity, Paternity, and Adoption Pay • Shared Parental Pay <p>Workers usually are not entitled to:</p> <ul style="list-style-type: none"> • minimum notice periods if their employment will be ending, for example if an employer is dismissing them • protection against unfair dismissal • the right to request flexible working • time off for emergencies • Statutory Redundancy Pay 	<p>Established as self-employed where neither a contract of employment nor a contract to personally do work exists.</p> <p>No specific employment rights attached to this status, but health and safety protections and anti-discrimination rights apply.</p>

1.3 HM Revenue & Customs - National Minimum Wage and National Living Wage

The National Minimum Wage (NMW) was introduced in 1999 as a result of the National Minimum Wage Act 1998 (“the 1998 Act”). The 1998 Act introduced a statutory right to be paid a certain minimum amount of remuneration for work performed. All workers, as defined in Section 54 of the 1998 Act, are entitled to the NMW or the NLW. Table 2 sets out the current rates, future rates and coverage of the NMW/NLW. From April 2016 a National Living Wage (NLW) was introduced ensuring minimum rates of pay for workers aged 25 and above.

Table 2: Rates and Coverage of the NMW/NLW, UK, 2016-2017

Age	October 2016	April 2017	Coverage (Number and percentage covered) from April 2016
Apprentice	£3.40	£3.50	36,000 (18.8%)
16-17	£4.00	£4.05	27,000 (9.4%)
18-20	£5.55	£5.60	115,000 (11.5%)
21-24	£6.95	£7.05	169,000 (8.4%)
25 and over	£7.20	£7.50	1,596,000 (6.7%)

Source: LPC (2016b) ASHE (2016)

Note: Apprenticeship rate is for apprentices aged 16 to 18 and those aged 19 or over who are in the first year of their apprenticeship

Although policy responsibility for the NMW/NLW rests with the Department for Business, Energy and Industrial Strategy (BEIS), it is HMRC who are responsible for enforcement of the NMW/NLW. This is effected by means of a Service Level Agreement (SLA) with BEIS.

Enforcement of the 1998 Act by HMRC should act as a deterrent to non-compliant employers and instil confidence in workers that their employers are working within the system.

HMRC’s resources for NMW/NLW compliance and enforcement have grown from around £6 million in 2006-07 to £9.2 million in 2014-15 and to £13.2 million in 2015-16. To facilitate enforcement of the new NLW the enforcement budget was increased significantly in April 2016 to £20 million. HMRC NMW/NLW now has over 360 staff dedicated to enforcing NMW and NLW across the UK. The enforcement budget for NMW/ NLW is set to increase to £25.3 million in 2017/18.

The HMRC NMW/NLW team operate a series of interventions aimed at helping improve NMW/NLW compliance and enforcement. For instance, in spring 2017 there is a £1.7 million national minimum and living wage awareness-raising campaign to help ensure workers continue to receive the correct rates of pay following the increase and know what steps to take if they do not. The compliance and enforcement activities for the NMW and the NLW are the same.

In October 2016 HMRC announced the creation of a new team focussed primarily on tackling the most serious cases of non-compliance, including in large businesses. Only a

small part of the work of this team will focus on the labour market. NMW/NLW officers also participate in cross-Government teams conducting proactive operations to target non-compliance and illegal working. HMRC NMW/NLW has carried out joint work with the Department of Health and former Department of Business, Innovation and Skills to increase awareness amongst care workers and employers of the NMW/NLW.

The SLA with BEIS identifies priority sectors determined according to Ministerial priority. These may be subject to review during the year. The priority sectors for 2016/17 are social care, hair and beauty; hospitality and cleaning sectors. Priority sectors for 2017/18 are being considered.

HMRC NMW/NLW respond to every complaint received directly or referred from the Acas helpline. The allegations are triaged and investigated as appropriate. As well as reacting to individual complaints, NMW/NLW officers also conduct proactive risk-based enforcement.

NMW/NLW compliance officers have the right to enter a workplace, examine wage records and issue a Notice of Underpayment (NoU) where it is found that arrears of the NMW/NLW are outstanding. The employer has 28 days to pay any amount due to their workers or appeal against the NoU. If they fail to do so or their appeal has been unsuccessful, the claim can be taken to an Employment Tribunal or the County Courts. In the majority of cases where an employer is found to be non-compliant in paying NMW/NLW, the civil powers are sufficient to ensure a worker is paid back the arrears they are owed quickly.

Since the introduction of the NLW, a number of measures aimed at improving compliance and strengthening enforcement of the minimum wage were put in place. This included raising financial penalties for non-compliance and increasing HMRC NMW/NLW's enforcement budget.

HMRC seek to recover arrears of wages for workers and impose civil penalties on employers for NMW/NLW breaches. From 1 April 2016, the calculation of minimum wage underpayment penalties was increased by BEIS from 100% to 200% of arrears so increasing the deterrent for employers. The penalty is reduced by half if the unpaid wages and the penalty are paid within 14 days.

Employers who break NMW or NLW law and owe over £100 in wages are "named" as part of the BEIS scheme introduced in 2011. The naming scheme is intended to have both reputational and financial consequences for employers, acting as a deterrent for employers and increasing compliance. It is envisaged that raising awareness of minimum wage enforcement in this way could also encourage more workers who have been underpaid to come forward. The revised naming rules came into effect in October 2013, and, following the most recent Government announcement in February 2017, more than 1,000 employers have been exposed with total arrears of more than £4.5 million. Naming is not an alternative to criminal prosecution.

Where there is a wider public interest, or in the case of employers who are persistently non-compliant or who refuse to cooperate, HMRC may refer cases for criminal prosecution to the Crown Prosecution Service (CPS), who will consider the evidence provided and determine whether it is in the public interest to prosecute. As of January 2017, 13 employers in total have been prosecuted for NMW/NLW non-compliance. Prosecutions are reserved for the most serious cases as these take longer than civil prosecutions, do not necessarily result in arrears of wages being paid to workers and the cost of a prosecution case is approximately £50,000.

Since HMRC began enforcing the minimum wage in April 1999, it has identified more than £68m in arrears for over 313,000 workers. In 2015/16, HMRC identified pay arrears in excess of £10m for over 58,000 workers. This was three times the arrears identified in the previous year. In 2016/2017, four employers were prosecuted for non-compliance with NMW/NLW regulations.

1.4 Gangmasters and Labour Abuse Authority (GLAA)

The Gangmasters and Labour Abuse Authority (GLAA) was first established as the Gangmasters Licensing Authority (GLA) by the Gangmasters (Licensing) Act in 2004 to protect vulnerable and exploited workers following the deaths of 23 Chinese cockle pickers in Morecambe Bay.

The Gangmasters (Licensing) Act 2004 provided for a licensing scheme to regulate the supply of labour to the farming, food processing and shellfish gathering sectors. It established an NDPB, the GLA, to administer the scheme.

Following its move from DEFRA to the Home Office, the GLA became the GLAA in the Immigration Act 2016, acquiring a wider remit and extended powers enabling the body to effectively tackle very serious cases of non-compliance, including where modern slavery is suspected (see section 1.4.3 below).

The main focus of its licensing work is to respond to information received and their control priorities reflect this. There are trade bodies covering the GLAA area, which include the Association of Labour Providers and they meet as part of a wider labour users group.

The GLAA operates a front end approach to licensing, carrying out inspections in advance of granting licences. Once licensed, a business must notify GLAA of commencement of trade, in line with the terms of their licence.

1.4.1 Licensing

A gangmaster is a person who supplies a worker to do work covered by the Act (the more general term across all recruitment sectors is labour provider). The Act created five offences, the two main ones being: (i) acting as a gangmaster without a licence; and (ii) entering into arrangements with an unlicensed gangmaster.

As of April 2016, there were 996 licensed gangmaster businesses. In 2016/2017, the GLAA had 70 full time equivalent staff and has a budget of £4.8 million covering 460,000 workers. GLAA received an additional £2 million for 2017/2018 to support the recruitment of additional Labour Abuse Prevention Officers (LAPOs) who will have the new police-style enforcement powers set out in the Immigration Act 2016.

The licensing scheme aims to ensure a level playing field for all those who supply workers covered by the Act and that these suppliers meet the standards required by law. All new applicants are assessed by a GLAA officer to make sure they meet the required licensing standards.

The current Licensing Standards were issued in May 2012. These standards are used to assess the labour providers' performance against licensing conditions including the obligation to comply with a number of employment and other laws. Standards cover a

range of areas including: the NMW/NLW; Health and Safety; tax and national insurance, forced labour; compliance with rules on the employment of migrant workers; and payment of benefits such as sickness and maternity pay.

Compliance with the Licensing Standards is assessed using a points system. Those businesses scoring above a set number will normally have their licence refused or revoked. However, a licence may be issued with Additional Licensing Conditions where the GLAA determines that doing so would be proportionate.

The GLAA is an intelligence-led organisation. Much of its work in enforcing worker protection is based on the information it receives from both open and covert sources. This information is used to assess risks and to determine what actions to take in order to ensure compliance, for example in determining when further compliance inspections are required, if a gangmaster's licence should be suspended or revoked and whether criminal investigations should be pursued with a view to prosecution. In exercising these functions the GLAA works closely with other enforcement partners including the police, the National Crime Agency, HMRC and local authorities. In 2015-2016, the GLAA were involved in 54 joint operations and investigations with partner law enforcement agencies.

1.4.2 Licensing Activity 2015/16

A gangmaster supplies a worker to do work for another person. The worker is not directly employed by the gangmaster. The work carried out would fall under one or more of the following:

- harvesting or gathering agricultural produce
- gathering shellfish
- processing or packaging agricultural produce

In 2015/16 142 new licences were granted and 9 refused. 14 gangmasters – supplying 2,598 workers – had their licence revoked. Revocation was normally due to breaches of one or more Critical Licensing Standards (<http://www.gla.gov.uk/media/2745/licensing-standards-aug-2016.pdf>). Examples of these breaches are:

- fit and proper – i.e. obstructing the GLAA, been disqualified from acting as a Director
- not paying correct amount of tax to HMRC in a timely manner
- workers not being paid at least the NMW
- withholding wages
- using vehicles to transport workers without the correct insurance/licence in place

In 2015/16 the GLAA carried out around 140 application inspections and around 100 compliance inspections (covering around 10,400 workers in the licensed sectors).

GLAA carry out 'Tier 1' interventions – a low level resolution procedure which allows for the immediate rectifications for oversights over non-payments of small amounts of wages. The number of these interventions has increased year on year from 32 to 41 in 2015/16. £82,000 was recovered for 2,326 workers through this system.

GLA (2015/2016) reports that there were 22 offenders awaiting trial in connection with 86 indictments which included violence, fraud, sham marriages, obtaining a GLA licence by deception and other breaches of employment law. Almost 3,000 potential victims of labour exploitation were identified and given support.

1.4.3 Extension of GLAA powers

As has been noted above, under the Immigration Act 2016 the GLA has evolved into the GLAA. It will retain its licensing and regulatory function regarding temporary labour in the food and farming sectors but have a much broader role addressing labour exploitation across the entire labour market.

These stronger Police and Criminal Evidence Act 1984 (PACE) powers, which came into full effect in spring 2017, allow the GLAA to investigate labour market offences under the:

- Modern Slavery Act 2015 (where these relate to force or compulsory labour);
- National Minimum Wage Act 1998;
- Employment Agencies Act 1973 and
- Gangmasters (Licensing) Act 2004.

This enhanced investigatory function applies to all workers and is not merely restricted to temporary workers or those within the licensed sectors.

This new GLAA activity will be carried out by Labour Abuse Prevention Officers (LAPOs). They will be able to take immediate and effective action against rogue employers. LAPOs will have the power to: investigate modern slavery where it relates to labour abuse and other labour market offences; arrest suspects; to enter premises where they have a reasonable belief that labour market offences are being committed; to search and seize evidence of breaches of labour market regulations. GLAA intend to focus on the more serious cases where multiple labour market offences have been committed. Routine cases will continue to be dealt with by other enforcement bodies.

The Immigration Act 2016 also created a new enforcement tool – the labour market enforcement (LME) undertaking and orders regime – to give enforcement bodies a more effective and durable sanction that they can use against unscrupulous employers who are wilfully or repeatedly breaching labour market regulations that are in place to protect their workers. For the first time, exploiters who commit certain key labour market offences will face possible custodial sentences. The GLAA will have powers to request a LME undertaking and to apply for an LME order (see section 4.2 for more details).

Greater flexibility in licensing is also now permitted under the Immigration Act 2016. The current wording of the Gangmasters (Licensing) Act 2004 simply names the sectors that can be licensed and only allows for the removal of sectors without primary legislation. Changes have been introduced to ensure that the licensing regime can be flexed to meet the changing nature of the threat of labour exploitation. This includes the facility to vary the licensing criteria to meet risk more effectively. This could be used to, for example, issue longer term licences to businesses that have held a licence for many years. Alternatively, the GLAA may choose to strengthen licensing criteria for certain sectors where the risk of non-compliance is deemed to be greater. Decisions on licensing are, ultimately, for Ministers.

1.5 Employment Agency Standards Inspectorate (EAS)

The Employment Agency Standards Inspectorate (EAS) enforce the Employment Agencies Act 1973 and the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (both as amended). EAS are a body in the Department of Business, Energy and Industrial Strategy (BEIS) enforcing agency legislation in Great Britain whilst The Department for the Economy in Belfast is responsible for employment agency enforcement in Northern Ireland.

EAS work closely with employment agencies, hirers and work-seekers to ensure compliance with employment rights, particularly for vulnerable agency workers, and to ensure that everyone who uses the services of a private agency to find work is treated fairly.

Their two key strategic drivers are ensuring effective enforcement and compliance of the law, and delivering efficient customer service. Examples of offences investigated by EAS include placing false advertisement for jobs, employment businesses failing to pay wages to workers and providing additional services to work-seekers for a fee before providing any work-finding services.

The EAS inspectors will initially make contact with the agency where a breach has been reported, and inform the agency of legislation requirements and the obligation to comply. Where necessary, EAS inspectors will visit the agency in person. In extreme cases, EAS can seek prosecution of an agency. The purpose of enforcement is to encourage and sustain compliance with the legislation.

In 2015 an amendment to the Conduct of Employment Agencies and Employment Businesses Regulations was taken forward relating to the advertising of job vacancies by employment agencies and employment businesses. The proposal was to ensure that all vacancies were advertised in English and in Great Britain at the same time or before being advertised in EEA countries. This came about following large numbers of employment agencies targeting migrant workers from Poland and placing them into low-paid temporary employment in a variety of industries across the United Kingdom after Poland, and later other Eastern European countries, acceded to the European Union in May 2004. A further amendment to the Conduct of Employment Agencies and Employment Businesses Regulations came into force in 2016 prohibiting employment agencies and businesses from placing generic recruitment advertising, in relation to vacancies in Great Britain, in other EEA countries but not in Great Britain.

As well as sharing intelligence where appropriate with other enforcing bodies, EAS participate in joint working operations with organisations such as GLAA, HMRC NMW/NLW, Immigration Enforcement, and the Health and Safety Executive to ensure that illegal or exploitative behaviour is effectively targeted. EAS have also worked closely with the Pensions Regulator on EAS-led targeted operations across the country, visiting a number of employment businesses. In one example EAS were involved in an operation led by the Pensions Regulator, with assistance from Nottingham and Derbyshire police forces, in relation to a specific agency where allegations were made about workers being opted out of the pension schemes without the workers knowledge, and workers being underpaid or hirers being overcharged.

EAS enforcement action mainly focusses on handling and resolving complaints received from affected workers. They also carry out targeted inspections of high risk activities by either targeting a geographical area or trade sectors.

There is a risk based assessment process in place to determine EAS priorities so enforcement work can be directed to areas where they are most likely to achieve results. This could be based on particular geographical locations or work sectors where higher than average numbers of complaints are received, information from other enforcement bodies suggesting non-compliance or where the nature of the activity is high risk. High risk cases include non-payment to temporary agency workers and potentially serious consequences of poor practice such as not performing Disclosure and Barring checks on nurses or teachers.

In their 2016/2017 strategy, EAS outline aims to drive more targeted enforcement operations based on intelligence that highlights sectors or geographical locations where a higher incidence of non-compliance is more likely. The actions EAS expect to achieve include clearing 95% of complaints within 12 weeks of date of receipt and developing risk profiling skills to enable EAS to focus efforts which yield the greatest impact.

Funding for EAS in 2016/2017 was £500,000 for 11 full-time equivalent EAS inspectors enforcing compliance across around 18,000 agencies and an estimated 1.1 million workers. This is an increase on resources provided before 2014 where nine EAS related staff and funding were moved across to HMRC-NMW to create a new team focussed on enforcing non-payment of NMW in the recruitment sector, leaving a smaller team in BEIS.

When a complaint has been received about an agency or employment business, EAS have a target of five working days to make contact with complainants and inform them whether the complaint falls within the scope of the Employment Agencies Act or Conduct Regulations. If the decision is made that a complaint is to be investigated, EAS aim to conclude the investigation within six weeks from the date the complaint was received in EAS. During the period 2015/16, around 75% of cases were completed within this timeframe.

Following an inspection, EAS issue warning letters to agencies where breaches of legislation are found and seek to ensure that corrective measures are put in place. The agency is expected to provide a written response within 14 days of the date of the warning letter and failure to respond could result in further enforcement action.

Since November 2016, EAS have attained greater powers; they can seek Labour Market Enforcement Undertakings from agencies or employment businesses to prevent on-going non-compliance with legal obligations (discussed in more detail in Chapter 4). The maximum duration of an LME Undertaking is two years. Where an agency or employment business fails to comply or breaches an LME Undertaking, EAS can apply for a Labour Market Enforcement Order. The maximum duration of an LME Order is two years. Where an agency or employment business fails to comply or breaches an LME Order they could be prosecuted, resulting in an unlimited fine or imprisonment.

EAS can consider prosecution. In England and Wales, EAS can engage with BEIS prosecution lawyers who will decide if it is appropriate to proceed with the case and if there is a realistic prospect of conviction. In Scotland, EAS can make recommendations to the Procurator Fiscal demonstrating there is sufficient evidence and that the prosecution is in the public interest for Scotland.

EAS also have powers to prohibit individuals from running or acting as an agency for up to 10 years by application to an Employment Tribunal. Prohibition can be sought based on information obtained during an investigation or after successful prosecution of an agency either by EAS or other enforcement bodies. Once an individual has been prohibited, they cannot be involved in the running of an agency during their prohibition period and any breach of this order could lead to further proceedings can face criminal proceedings. A public list of disbarred individuals is maintained by EAS on the Gov.UK website at: www.gov.uk/government/publications/list-of-people-banned-from-running-an-employment-agency-or-business. The names of 18 individuals are currently published on the prohibited persons list.

Where an investigation finds evidence of non-compliance against a corporate body, EAS can prosecute that legal entity and instigate legal proceedings against officers of the corporation who have control over the relevant activities.

EAS publish annual reports detailing their performance for the previous financial year. Such reports outline: the number of complaint cases and targeted inspections and other related compliance activity, including in future LME Undertakings and Orders; prosecutions or prohibitions issued to employment agencies.

Between 2011/12 and January 2017 nine prosecutions were brought in the Magistrates' Courts and in seven of these convictions were obtained against the individuals and companies involved. During the same period EAS also brought proceedings at an Employment Tribunal to prohibit three individuals from being involved in running or owning employment agencies or employment businesses. All were successful, with one individual being prohibited for a period of seven years and the other two for 10 years.

In 2015/2016, EAS received 781 complaints and dealt with 730 and carried out an additional 194 targeted inspections. In the same time period, EAS recovered around £83,000. Most of this amount related to non-payment of wages or money owed to temporary workers, or where job finding fees were being charged to work-seekers. The scope for prosecutions fluctuates and EAS will always pursue a prohibition or prosecution where it is viable to do so.

In 2016/2017 (as of end of February), around 750 complaints had been received by EAS, 90 inspections, including targeted investigations, have been completed and £56,751 has been recovered. EAS are working on 18 cases that could potentially result in prosecution or prohibition proceedings.

1.6 Other Stakeholders

There are a multitude of stakeholders connected to labour market enforcement in the UK. We list here the key Government organisations outside of the three principals.

1.6.1 Modern Slavery

The Prime Minister's **Modern Slavery Taskforce** was set up to develop the operational law enforcement response to modern slavery. The **Modern Slavery National Threat Group** is chaired by the National Policing Lead and tasked with bringing together law enforcement bodies and government to mitigate the threat. I will work closely with this group. First, to monitor the scale and nature of modern slavery. Second, to offer a central point of contact for other forms of labour exploitation that fall short of the most serious

harm, but where previously there may not have been a route to share information or intelligence.

The **Independent Anti-Slavery Commissioner**: The Commissioner's role is to encourage good practice in the prevention, detection, investigation and prosecution of slavery and human trafficking offences and in the identification of the victims of those offences.

The Commissioner has produced a strategy that details how he intends to work with different statutory bodies that have a duty to co-operate and how he will be working with non-governmental bodies. The aims of the Commissioner are to see an increase in the numbers of victims of modern slavery that are identified and referred for appropriate support. And, in tandem, to see an increase in the numbers of prosecutions and convictions of traffickers and slave masters.

1.6.2 National Crime Agency

The role of the National Crime Agency (NCA) is to protect the public by tackling serious and organised criminals who present the highest risk to the UK. This includes human trafficking and modern slavery. They have set up a Modern Slavery Human Trafficking Unit (MSHTU) as part of their Intelligence Directorate, which coordinates the law enforcement response across the UK and internationally.

The National Referral Mechanism (NRM) is a framework for identifying victims of trafficking or modern slavery (which explicitly includes labour exploitation) to ensure they receive the appropriate support. Referrals come from a variety of stakeholders including the police, Home Office operations (Border Force, UK Visas and Immigration, Immigration Enforcement) and NGOs/third sector organisations such as the Salvation Army. This information contributes to building a clearer picture about the scope of human trafficking and modern slavery in the UK. A key part of their work to combat modern slavery crimes involves collaborating with a wide range of partners and stakeholders.

1.6.3 Police Forces

The 43 police forces have an important role in tackling modern slavery offences including labour exploitation. This is mainly at a local level, but it can be developed if it is more serious and dealt with by a regional centre. They often receive information that relates to labour exploitation, which is not only at the serious high-harm end of Modern Slavery.

1.6.4 Home Office Immigration Enforcement

Immigration Enforcement evolved from what was the UK Border Agency in April 2012. Responsible for preventing abuse, tracking immigration offenders and increasing compliance with immigration law, they work with partners such as the police to regulate migration in line with government policy. Immigration staff work in the UK and overseas, including air and sea ports.

Enforcement activity includes campaigns that target those who benefit from supporting illegal migration such as employers and rogue landlords. They also pursue the criminal gangs who facilitate and benefit from illegal migration, both through arrests and confiscation of their illicit gains. Immigration Enforcement routinely uncovers and receives intelligence relating to employment abuses which go alongside immigration issues and they are a key partner for the labour market enforcement bodies.

1.6.5 Health & Safety Executive

The Health and Safety Executive (HSE) is the national regulator for work-related health and safety in Great Britain and works with co-regulators, colleagues across government and other stakeholders to deliver healthier, safer workplaces. HSE's primary focus is preventing harm to workers, using a variety of evidence-based interventions to secure effective management and control of risk. They provide access to concise, straightforward and up-to-date guidance with 35 million visits to the website in 2015/16. HSE hold to account those who fail to meet their obligations to protect people from harm. This can include serving improvement or prohibition notices and taking prosecutions.

Annually HSE carry out around 20,000 workplace inspections, investigate over 6,000 incidents and look into over 10,000 health and safety concerns reported by workers or other people. In 2015/16 around 8,000 notices were issued by HSE. 650 cases were prosecuted with a conviction rate of 95%, 40 of which resulted in custodial and community service/rehabilitation orders.

HSE may uncover labour market abuse in the course of securing effective management and control of health and safety risks. It is therefore essential that fluid communication exists between the labour market bodies and the HSE.

1.6.6 Local Authorities

Local authorities have responsibility for particular sectors of the economy including: offices, shops, retail and wholesale distribution, hotel and catering establishments, petrol filling stations, residential care homes and the leisure industry.

They enforce a range of legislation in relation to the private rented sector, including tackling unsatisfactory housing conditions, overcrowding, implementing licensing for certain Houses in Multiple Occupation (HMOs) and responding to complaints about harassment and illegal eviction. They also enforce a range of regulatory legislation which may indirectly bring inspectors in Environmental Health and Trading Standards divisions into contact with businesses employing migrant labour e.g. licensing, trading standards, animal health and welfare, feed and food hygiene requirements on farms. Local Authority intelligence information will be a vital component as the Intelligence Hub is developed over the coming year.

Chapter 2

Role of the Director of Labour Market Enforcement

2.1 Immigration Act 2016 and activity January-March 2017

The Immigration Act 2016 provided for the appointment of a Director of Labour Market Enforcement who must bring together a coherent assessment of the extent of labour market exploitation, identify routes to tackle exploitation and harness the strength of the three main enforcement bodies. Specifically my role is to:

- develop a common set of priorities for the three enforcement bodies to work to and respond more effectively tackling the key exploitation risks.
- develop and build a functional intelligence hub, pooling available relevant intelligence and information, supporting effective intelligence and data sharing between the three bodies and, more widely, promoting effective, targeted responses to risks.
- use the outputs from the intelligence hub, build an enhanced intelligence picture to inform recommendations for change in the areas/sectors of greatest risk, realising the opportunities created by the Immigration Act 2016.
- establish key partnerships beyond the boundaries of the three enforcement bodies to build intelligence and the picture of risk, informing future strategy, priorities and joint working.
- support the three bodies in building capability to implement the provisions within the Immigration Act 2016 to tackle persistent offenders through use of the new powers for undertakings and orders.
- build on the picture of non-compliance to permit Ministers, if necessary, to re-examine the licensing regime and criteria at the GLAA.

Delivering the above is a considerable undertaking. However, given sufficient resource I believe this is achievable. The Immigration Act 2016 sets out that the resources afforded to me will, though, be determined by Home Office and BEIS.

The Immigration Act 2016 states that the Director must before the beginning of each financial year prepare a labour market enforcement strategy for that year. This introductory strategy, in line with the Act:

- describes the enforcement work of the three main bodies and other stakeholders (chapter 1)
- describes the role of the Director (chapter 2)
- sets out the evidence on non-compliance, using published sources and intelligence (chapter 3)
- sets out the issues for consultation with the three main bodies and other stakeholders including BEIS and Home Office officials, Modern Slavery Commissioner, police, Local Authorities, trade unions, employers and NGOs (chapter 4)

Then, once a full consultation has taken place, I will produce in spring 2018 a revised, fuller strategy. This will include, as required by the Act, an examination of any education, training and research activity required to raise awareness of United Kingdom employment regulations among employers and workers. The preparation of a revised strategy in-year is compatible with the legislation. In the meantime it is sensible that the three bodies continue to operate according to their own strategic plans and previously allocated enforcement resources.

In summary, my role is: (i) to produce a strategy, endorsed by BEIS and Home Office Secretaries of State, to guide operations of the three main enforcement bodies; (ii) to develop the intelligence hub; (iii) and to write an annual report setting out for Ministers how, collectively, the enforcement bodies performed relative to the Ministerially agreed strategy.

Much of the recent enforcement model, particularly in respect of HMRC NMW/NLW and EAS, was predicated on responding to complaints. This work remains important, but the enforcement bodies are now adopting a broader-based enforcement model which looks to expand and optimise the use of intelligence from wider sources to expose cases of hitherto hidden exploitation.

Enforcement bodies want to support business in building a stronger economy for the United Kingdom by ensuring we target the worst offenders. The ability to strengthen and vary our enforcement approach through the provisions in the Immigration Act 2016 gives us, for the first time, a real opportunity to tackle exploitation with a risk-based and better evidenced-based approach. We do not want to waste enforcement resources or the time of those employers legitimately going about their business and treating their employees correctly. Rather, we want to create a level playing field by targeting businesses which illegally undercut their legitimate competitors to gain an unfair advantage.

We will use the stronger evidence base from the pooled intelligence and resource across the spectrum of labour market exploitation to ensure we adopt a variable, nuanced approach to enforcement. Where the evidence suggests minor infringements result from a lack of understanding or knowledge amongst employers and workers, we will work to educate and support compliance. We wish to direct greater effort against those employers who are systematically or criminally exploiting workers causing social and economic harm.

I have already met: officials from the three main bodies; BEIS and Home Office Ministers and officials with enforcement and intelligence responsibilities; Matthew Taylor, the Independent Anti-Slavery Commissioner and the Care Quality Commission. In addition I engaged with stakeholders at two major round table events in January (attendees detailed in Appendix B) and my office launched a stakeholder survey prior to my arrival.

Matthew Taylor is conducting a review into how employment practices need to change in order to keep pace with modern business models, more information can be found here: <https://www.gov.uk/government/groups/employment-practices-in-the-modern-economy>

We agreed I would briefly describe our enforcement activity in his report, due in July. The Taylor review will comprise a vital input to our spring strategy document.

Kevin Hyland, the Independent Anti-Slavery Commissioner, set out his five priorities for 2015-17 in his 2016 Annual report. One priority is private sector engagement to

encourage supply chain transparency and combat labour exploitation. Our activities are complementary. We have common aims and intend to work together co-operatively.

Non-government bodies will play a key role in formulating my initial strategy. These include: business organisations e.g. Confederation of British Industry (CBI), Federation of Small Businesses (FSB), Institute of Directors; trade unions e.g. Trades Union Congress (TUC), Unite, Unison; trade associations e.g. Recruitment & Employment Confederation (REC), British Retail Consortium (BRC); Association of Labour Providers (ALP); NGOs e.g. Focus on Labour Exploitation (FLEX). The TUC have stated they believe

“there should be a statutory duty requiring the Director to consult with relevant stakeholders when developing the annual enforcement strategy”

Although this has not been made a statutory requirement, I will engage fully with stakeholders ensuring extensive consultation has taken place to inform my strategy.

We need to work better together, across central and local government and beyond, with key partners, employers and employees themselves. This will create a level playing field for business to thrive. In turn this supports workers with decent working conditions, their rights protected and enforced.

“..the Director of labour market Enforcement...will bring new focus on co-ordinated, intelligence-led work across all our enforcement agencies....will enable those agencies to take firm and effective action against exploitation.” Rt. Hon. Theresa May MP, Home Secretary (Jan 2016)

2.2 The remit of the Director

My remit stretches across the whole labour market, covering direct employment as well as labour providers. It covers the whole spectrum of non-compliance, from accidental infringement to serious criminality.

I will build on the excellent work of the three main enforcement bodies: National Living/Minimum Wage Enforcement Teams in HMRC (NMW/NLW), Gangmasters and Labour Abuse Authority covering licensing and labour exploitation and Employment Agency Standards Inspectorate covering agency practice. The intention is to yield:

“a more targeted, joined up approach to tackle exploitation and ensure compliance and also provide greater flexibility to pool resources” (BEIS/Home Office 2016a)

The Director’s role supports and promotes enhanced partnership working including, but not confined to, the three partner bodies and the development of a strengthened intelligence picture through the dedicated intelligence hub (see Chapter 4). Using this improved evidence base and stronger operational alignment, I will develop a strategy which clearly sets out the nature and scale of non-compliance in the labour market and how we tailor and innovate our response to tackling it. Bringing together for the first time this fuller picture of abuse will enable us to work together to more effectively address the causes and impacts of exploitation across the spectrum of abuse.

My role is one providing leadership and co-ordination, as well as support and strength to the three bodies and the delivery of our agenda. But this is not just about the three enforcement bodies. A wider dialogue is required. I want to reach out to other key

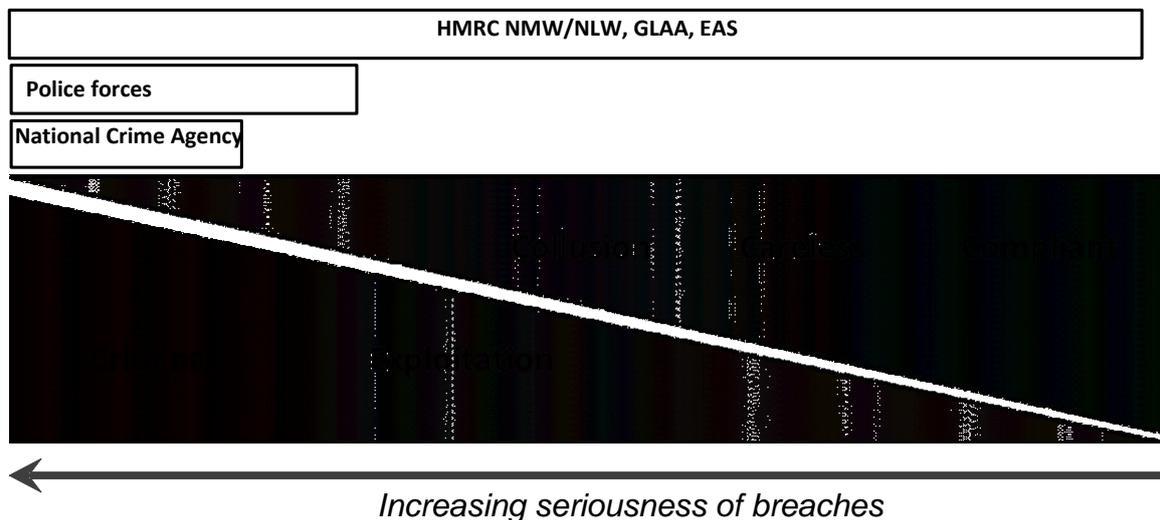
stakeholders and partners, ensuring we have a definitive picture of exploitation and an enhanced enforcement capability where it is needed by working across boundaries. I will also ensure that the vulnerable workers have a voice – many will not be able or willing to report abuse. They may fear for their own safety, from a vulnerable position which may make them reluctant to contact the authorities. I will do my best to ensure that their voices are heard.

A key early task is to develop an Intelligence Hub. The Immigration Act 2016 gave the Director, the three enforcement bodies and other institutions the power to routinely share data and intelligence, formalising current information sharing practices to a certain extent. The Hub will provide central co-ordination for information and data to help me identify trends and patterns in areas of the labour market where workers are at risk of exploitation. This will enable me to develop the annual labour market enforcement strategy such that enforcement efforts are coordinated and targeted where the risk of non-compliance with labour market is greatest. This will ensure that our approach to enforcement keeps track of changes in the exploitation landscape and bring about continuous improvement in labour market compliance.

2.3 Labour market non-compliance

Labour market non-compliance can range from a basic lack of understanding and application of labour rights and regulations through to criminal exploitation on a large scale which goes beyond worker exploitation (see Figure 1).

Figure 1: Compliance Spectrum



Examples of the sort of mistreatment workers can face and the span of illegal behaviour by employers and employment operatives are listed below:

- Agencies charging their workers fees for finding work
- Facilities, including housing, transport and working conditions provided for workers are unsanitary and unsafe

- Employers deliberately paying employees below NMW/NLW or requiring long hours above the lawful maximum
- Agencies withholding payment of wages
- Employers deducting pay for items such as uniforms and the remaining wages for employees being below NMW/NLW
- Employers withhold workers' passports and other identity documents
- Employers and agencies incorrectly treating workers as self-employed with the intention of evading national insurance, PAYE and other financial obligations
- Workers' holiday pay is withheld
- Physical and mental mistreatment

It is helpful to separate risks arising from direct employment and risks arising from labour being supplied via a labour provider. For direct employment the main risk is non-compliance with the NMW/NLW. Research and intelligence suggests this is more likely in smaller businesses sometimes operating as part of a larger supply chain and in sectors such as food manufacturing, hospitality, care and construction. The occupations are typically low skilled and low paid and often paid directly in cash. But employment risks are not confined to small firms. Employment practices at some household name firms have recently come under the microscope.

The NLW provides a welcome boost for low paid workers and a potential enforcement challenge. The LPC estimates that the 2020 £9.00 an hour target would raise coverage from around 5 per cent of the labour force in 2015 to around 14 per cent by 2020. New sectors, for example, security and call centres, will require extra monitoring.

For labour providers, the main exploitation risks are non-compliance with the minimum wage, unlawful deductions for services such as transport and charging fees for finding jobs. With gangmasters and employment/recruitment agencies the employment relationship becomes less direct: who is responsible for working conditions and correct pay?

Labour exploitation can take a number of forms from threats of physical violence, restriction of movement, including being tied to a work permit/accommodation, debt bondage and withholding of wages. In more extreme cases, workers subject to such exploitative treatment can become vulnerable to being suborned. The impacts of such worker exploitation go beyond the effect on the workers themselves. Such exploitation also impacts on those responsible, law abiding businesses that play by the rules and value their employees. Often, exploited workers are housed in poor quality housing, in poor states of repair which are overcrowded. Houses of Multiple Occupancy (HMO) and poor quality housing can and does impact on the health and wellbeing of the occupants and can lead to anti-social behaviours, such as noise, alcohol abuse and associated crime, rubbish and the consequent negative impact on neighbours and localities.

Low skilled migrants are sometimes at greater risk of exploitation than other workers (MAC 2014). Often, they do not speak much English, do not have a bank account or housing organised. Many, perhaps most, will be unfamiliar with complaints procedures. There is a need to focus on building part of the intelligence picture around these potentially vulnerable workers. At the organised criminal end of exploitation the abuse can widen to serious financial fraud, money laundering and human trafficking. Effective, co-ordinated and risk-based enforcement against exploitation involves more than ensuring people get the right pay. Stronger enforcement will contribute to a fairer, safer society for all.

Chapter 3

Evidence on non-compliance

To produce an effective labour market enforcement strategy, it is necessary to know the scale of the challenge both before and after the delivery of the strategy. Indeed the Immigration Act 2016 specifically requires an assessment of the scale and nature of non-compliance in the labour market.

My first full strategy, which I intend to publish in spring 2018, will consider the evidence on non-compliance in a much more comprehensive way. For now, though, this chapter introduces and presents an overview of some of the existing available evidence.

3.1 Information sources

This chapter summarises what we currently know about non-compliance and in doing so draws on the following sources of information:

- Official National Statistics (ONS) on earnings, specifically the Annual Survey of Hours and Earnings (ASHE). This is particularly helpful for identifying the approximate scale of potential NMW/NLW non-compliance;
- management information on enforcement activity from the three bodies;
- bespoke studies and research from academia and research organisations; and
- intelligence data and information.

By its very nature information on non-compliance can be hard to get at, meaning that arriving at a full and comprehensive picture across the whole labour market is a challenge.

Together these data sources help paint an overall picture of non-compliance, but each has its limitations. A key contribution from my role will be the Intelligence Hub, which will capture and aggregate intelligence collected by the enforcement and stakeholder bodies linked to the United Kingdom labour market. This is essential to ensure the whole labour market is tackled.

It is currently not possible, from the intelligence picture alone, to establish the *scale* of non-compliance due to the fragmented nature of where information is held and for what purpose. But it does indicate levels of abuse across the compliance spectrum. That said, intelligence and the cases worked by the bodies give us some confidence that we understand the nature of non-compliance. From the cases worked, we will do more to build our knowledge of non-compliance by systematically capturing the intelligence to ensure lessons can be learned and risk assessed more accurately across the bodies.

Arguably, the biggest challenge remains around unreported, or hidden, non-compliance. For example, this may include: cash workers; work where the employer understates true hours; workers not coming forward to complain. Furthermore intelligence suggests that the hidden economy sees some of the more serious breaches. We consider the issue of unreported non-compliance further at the end of the chapter.

3.2 Brief overview of UK business and labour market

Before examining the extent of non-compliance in detail, it is helpful to first get an overall picture of the UK labour market.

According to ONS Labour Force Survey (LFS) (ONS 2017) there are currently around 31.8 million people in work in the UK, consisting of around 27 million employees and 4.8 million self-employed. Around 83 per cent of employment is in the private sector.

Using a different source of information the ONS also measures the total number of workforce jobs in the economy. The number of workforce jobs - around 34.6 million - is higher than the total number of people in work as some people may have more than one job. This distinction between people in work and workforce jobs is important for the discussion that follows.

There were 5.5 million private sector businesses at the start of 2016 (1.3 million with employees and 4.2 million without). 99 per cent of these are small businesses that employ fewer than 50 employees and medium enterprises. (BEIS, 2016b).

3.3 Nature and scale of non-compliance

3.3.1 Nature of non-compliance

As discussed in Chapter 2, there is a broad spectrum of non-compliance offences in the labour market (Figure 1). Many of the cases and breaches reported by EAS and HMRC NMW/NLW are at the lower end of the spectrum with many of the cases resulting from error or a misrepresentation rather than intended exploitation.

Box 2: HMRC NMW/NLW Case Study

HMRC have undertaken targeted enforcement within the retail sector. As part of the retail project, an initial meeting was arranged with a Company, followed by visits to a selection of both the employer's warehouses and branches. HMRC identified that the employer obliged store workers to commence work prior to their paid time, for example to attend team briefings or preparing the shop for trade ahead of opening the doors. Workers were also obliged to undertake security checks after their paid working time. The extra unpaid time spent on these tasks reduced some workers' rate of pay below NMW. As a large number of the employer's workers were paid at or around NMW, the impact was significant. As a result of this targeted investigation, HMRC identified significant arrears which were quickly recovered with the co-operation of the Company for over 29,000 workers.

Just over 40 per cent of HMRC NMW/NLW cases in 2015/16 were for arrears of £500 or less, with an average of £90 per worker. However 15 per cent of cases involve arrears of over £5,000. This can mean high arrears for one victim or a large number of victims with smaller arrears. These cases average almost £179 per worker (Table 9 Annex A).

Box 3: GLAA Case Study

GLAA received intelligence that a licensed business was withholding wages, not paying holiday pay and providing loans at a very high interest rate which workers could not afford to pay back. Cigarettes and food were also alleged to be paid instead of wages, and workers were being evicted from their accommodation due to not being able to pay their rent. The GLAA carried out a detailed investigation and found that the last recorded payment of holiday pay was in 2014. There was no evidence of workers requesting or taking any holiday and some had never taken or been paid any holidays since they started work in 2012. There was also evidence that fines were imposed on workers for many reasons, for example, being late or not answering the phone and that workers were living in appalling conditions in accommodation that the business had initially denied they provided. Houses were overcrowded, in poor condition and in one case mattresses were infested with lice. The GLAA also found evidence that the business had been provided loans to the workers, although no records could be produced of these or of the total amount initially loaned and what was outstanding.

The GLAA considered all 12 areas of non-compliance and based on the available evidence, the business failed to meet the standard in respect of 6 of those, and 3 out of the 6 were classed as critical failures. As a result of this investigation the GLAA revoked the licence of the business, and the business did not lodge any appeal against this decision.

GLAA regulations include a number of important protections for workers. Some of the most common allegations are around having no GLAA licence, not paying the minimum wage, physical and mental mistreatment, withholding wages and fees for additional services (see Table 10 Annex A for more details).

Box 4: EAS Case Study

EAS received numerous complaints from work-seekers who had been resident in the Philippines and had applied to a UK based employment agency seeking work opportunities in care homes throughout Great Britain. Each work-seeker had paid fees to the employment agency to be found work as carers and a place at a college to study for an NVQ.

The work-seekers arrived in the UK and started work. EAS investigated these complaints and interviewed the work-seekers and visited the agency to inspect their records and processes. The EAS investigation found that the employment agency was involved in providing a work-finding service and placing these workers into care homes. EAS found that the agency were illegally charging fees that related to finding or seeking to find persons work, contrary to the employment agency legislation.

EAS issued a Warning Letter to the agency and successfully secured compliance with the employment agency legislation. As part of their investigation EAS successfully managed to ensure that the 5 worker complainants were refunded the fees that they had paid to the agency. The combined total was £22,300. The agency also amended its procedures and stopped charging fees to persons for finding them work.

EAS cover various offences ranging from issues around terms and conditions to obstruction of EAS enforcement powers. The most common breaches are around withholding payment, notification of charges and terms, agreement to terms and provision of information.

At the criminal end of the spectrum, serious non-compliance includes activities of Organised Crime Groups (OCGs) connected to crimes such as illegal immigration, illegal working, trafficking and slavery, trade in prohibited goods and tax evasion. There are many bodies involved in the identification and prosecution of these crime types.

Migrants working without lawful immigration status can be vulnerable to exploitation and this sometimes occurs alongside the exploitation of workers who have the right to work here. Although NMW/NLW and other employment conditions do not apply to illegal workers, they do have basic health and safety rights.

Employment is one of the pull factors for illegal immigration and takes place in various circumstances. Otherwise law-abiding employers may occasionally employ illegal workers as a simple result of failures or errors in their recruitment and employment procedures. Documents presented to the employer to prove a right to work can vary from one which simply shows a name and address to full identity document (ID) papers. There are criminal enterprises that specialise in the provision of fake IDs and the quality of these can be very high. However, intelligence indicates some employers, particularly in the informal economy, deliberately seek to employ those with no legal right to work in the UK or are prepared to turn a blind eye and employ migrants who have either limited evidence or no immigration documents. Home Office Immigration Enforcement is responsible for taking action against employers and migrants who break UK immigration legislation.

What drives the non-compliance?

Non-compliance is seriously unfair to compliant businesses. Serious non-compliance (as against inadvertent non-compliance) is typically driven by financial gain. This, in turn, drives some compliant firms to become non-compliant.

The sectors commonly linked with non-compliance such as care, cleaning, agriculture, construction, food processing and hospitality are regularly under pressure to cut costs. Often this is associated with sub-contracting and squeezed profit margins. In some cases this spills over to false self-employment and tax evasion. Our flexible labour market has served us well. But it is vital that minimum labour standards are properly enforced.

The Joseph Rowntree Foundation (JRF) (JRF 2014) report on forced labour describes the common characteristics of economic areas where forced labour occurs as:

- pressure on costs, leading to intensification of work (such as in the food industry, where forced labour and piece rates are used by labour providers);
- variability in labour demand (such as the hotel industry);
- high concentration of migrant labour (particularly in low-paid and low-skilled manual work);
- use of agency and subcontracted labour that creates a grey area of informality.

The above characteristics are reflected within the information and intelligence we have seen for all levels of labour market non-compliance, evidencing the need for enforcement across the whole compliance spectrum.

3.3.2 Scale of non-compliance

Measuring non-compliance with NMW/NLW

In April 2016 it was estimated that, overall, there were 362,000 jobs paying less than the NMW or NLW. This is equivalent to 1.3 per cent of all UK employee jobs or 19 per cent of those paid at or below NMW and NLW rates.

Of those entitled to and paid below NLW, over 40 per cent were paid between £7.00 and £7.20 and a further 16 per cent were paid between £6.70 and £6.99 per hour. But this still leaves over 40 per cent paid at least 50 pence an hour below the NLW.

These estimates are derived from the Annual Survey of Hours and Earnings (ASHE), an annual survey based on a one per cent sample of employee jobs taken from HMRC PAYE records. The information for 2016 pay period included 13 April 2016. The number of low pay jobs in ASHE 2016 is not comparable with earlier years as the reference date for ASHE 2016 was 13 April 2016, just 13 days after the NLW was introduced. In previous years, all the rates were introduced in October and then ASHE measures in April - some 6 months later. It is important to remember that ASHE measures employee pay only and that individuals with more than one job may appear in the sample more than once. ASHE does not cover the self-employed or employees not paid during the reference period. Further, workers in the hidden economy are unlikely to be included in the survey.

The Low Pay Commission is itself investigating underpayment of the NMW/NLW. They compare underpayment data from ASHE with information from the Labour Force Survey (LFS). LFS data suggests more non-compliance than is evident in the ASHE. We will liaise with the LPC and provide more detail in our spring strategy document.

ASHE estimates do not in themselves provide a direct measure of NMW/NLW non-compliance: there are legitimate reasons for a job to be paid below the NMW/NLW, for example where accommodation is provided by the employer and wages may be offset to cover some of the costs. However, even where underpayment is not legitimate, there is some evidence to suggest that much of this may be due to error rather than deliberate non-compliance (BEIS (2011)). Evidence from cases investigated also indicates that employers believe they were compliant with the law and have fallen foul of the rules on uniforms, payroll issues, deducting costs etc. This is difficult to determine as businesses are unlikely to admit to deliberate non-compliance. However, illegitimate underpayment including unwitting non-compliance is a breach of the law and subject to enforcement action.

We consider separately below the ASHE evidence on underpayment, first for adults aged 25 and over and entitled to the NLW, and then second, younger workers in terms of NMW.

National Living Wage (NLW)

The National Living Wage (NLW) was introduced on 1 April 2016 for those aged 25 and above. ASHE 2016 estimates there were 1.6 million workers aged 25 and over (6.7 per cent of the workforce) covered by the NLW.

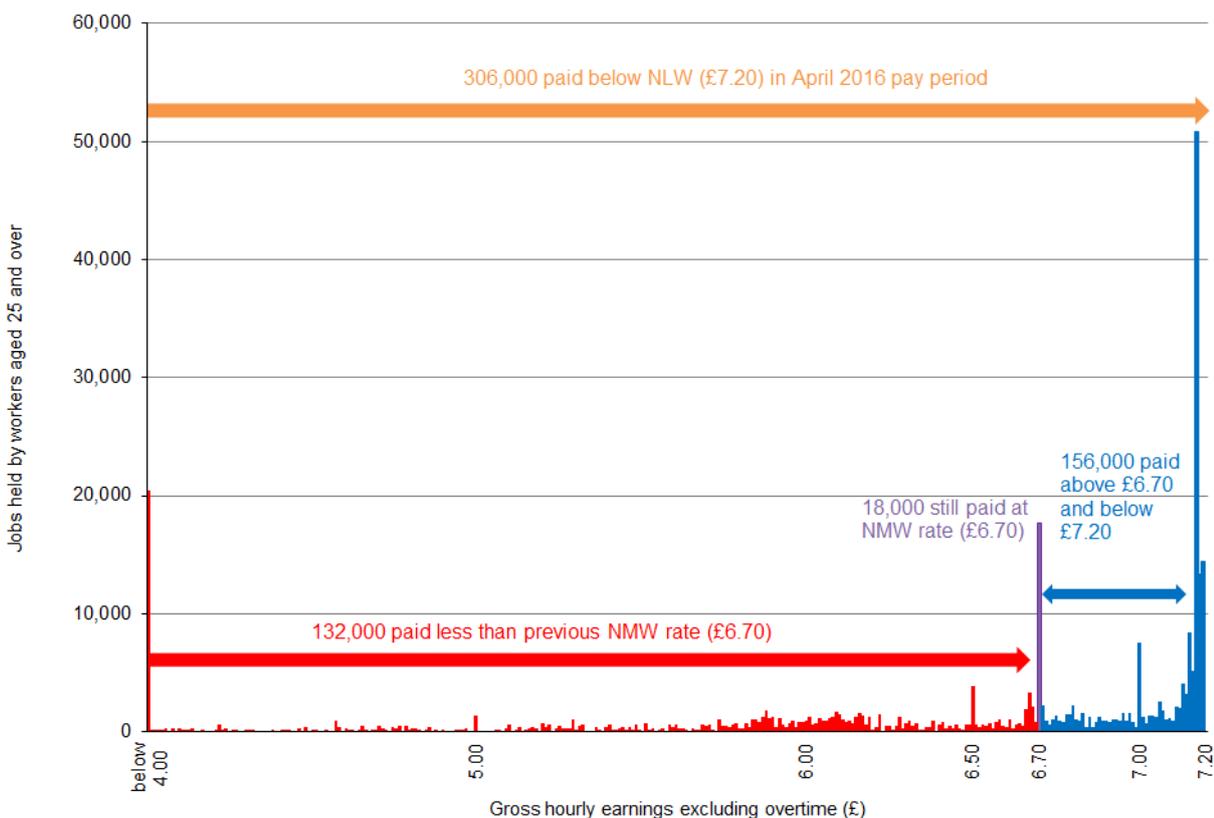
The introduction of the NLW in April 2016 coincided with an increase in the number of workers underpaid. Underpayment almost doubled from 160,000 (0.7 per cent of workers aged 25 or over) in 2015 to 300,000 (1.3 per cent) in 2016. As a proportion of workers (aged 25 or over) paid at or below the NLW, the figure went from 15 to 19 per cent. It

should be noted that some, possibly much, of the increase in underpayment was temporary: the NMW/NLW was updated in April, rather than in October as in previous years. Therefore, ASHE – which is carried out in April - may record some workers paid below the NLW but whose employer was in the process of making the necessary adjustments to their correct rate of pay. The NMW/NLW cycle has now been aligned. From 2017 it will be updated in April, although temporary compliance will still be an issue.

The Low Pay Commission’s report released in Autumn 2016 (LPC 2016b) also suggested that under payment may have risen around the introduction of the NLW, although the extent of this is currently uncertain. But they also found that evidence from stakeholders did not show an increase in non-compliance after the introduction of the NLW.

Figure 2 shows the distribution of hourly pay for those receiving less than £7.20. It shows that a large volume of workers (around 174,000) are paid at £6.70 (NMW rate) or just below the NLW. Cases between £6.70 and £7.20 may possibly include some cases of temporary non-compliance e.g. where an employer has failed to update wage rates immediately. However, if HMRC find outstanding NMW underpayment in even a single pay reference period it will be deemed in breach of the law and subject to enforcement action. There were also still 132,000 cases paid below £6.70 which cannot be explained by employers in adjusting to the new NLW rate.

Figure 2: ASHE hourly earnings distribution below NLW, for employees aged 25 and over, UK, 2016



Source: LPC (2016b)

National Minimum Wage (NMW)

Between April 2015 and April 2016 proportions of young workers (excluding apprentices) paid below the NMW remained low and, if anything, seemed to fall slightly across all youth age groups (Table 3 below).

Table 3 ASHE: under payment of the NMW by age, 2015 and 2016.

Young People (Excluding Apprentices)	Number paid below NMW 2015	Proportion paid below NMW 2015	Number paid below NMW 2016	Proportion paid below NMW 2016
Age 16-17	1,900	0.7%	1,700	0.6%
Age 18-20	15,000	1.6%	14,000	1.5%
Age 21-24	26,000	1.3%	24,000	1.2%

Source: Low Pay Commission (2016b)

Enforcement Activity

The ASHE data discussed above provide an estimate of the degree of underpayment of NMW/NLW and hence potentially one measure of non-compliance. Using enforcement data compiled by the three bodies begins to give a better sense of actual non-compliance. Such data only covers labour market enforcement cases that result from a complaint, allegation or targeted inspections. Generally these provide the number of investigations being carried out by the three enforcement bodies, the number of breaches found and the case outcomes.

It is important to be clear that this still does not give a direct measure of total non-compliance; instead it gives a picture of the volumes and nature of cases the enforcement bodies are dealing with. Workers who do not complain, or non-compliance that is not discovered through targeted enforcement activity, will inevitably remain unknown.

Because the remits, resourcing and funding of the three enforcement bodies differ, direct comparison should not be drawn from the data presented below. Cases and outcomes are defined differently across the enforcement bodies and differences in types of case and investigations carried out means that case volumes and definitions are not directly comparable. Although data may not be directly comparable, this section aims to give a fuller picture of available data across the enforcement landscape. Definitions used in this section are set out in Table 4.

Table 4: Definitions for Enforcement Activity Data

Enforcement Body	Measure	Definition
EAS	Cases	All Labour Market enforcement cases that result from a source such as a complaint, allegation or targeted inspection (includes all complaints even those found to be out of scope at a later date)
	Breaches	Total number of infringements of regulations found – can be more than one infringement per case
GLAA	Cases	All Labour Market enforcement cases that are ‘tasked’ to go forward as an investigation that result from a source such as a complaint, allegation or targeted inspection (includes application inspections)
	Breaches	Number of license standards breaches – compliance inspections only
HMRC NMW/NLW	Cases	All Labour Market enforcement cases that result from a source such as a complaint, allegation or targeted inspection
	Breaches	Number of cases where arrears were identified

Box 4: How are risks managed?

Each principal body has their own approach and expertise. Hitherto, there has sometimes been a lack of knowledge within one of the bodies about a compliance issue relevant to another body which is not picked up. The intelligence hub will help to share this information. The approach taken by each principal body is:

EAS: EAS handle and resolve all complaints received from affected workers. Most breaches are at the lower end of the compliance spectrum but there is intelligence to indicate more serious exploitation. They share information with other enforcement bodies where directly relevant.

GLAA: The GLAA produce internal risk assessments and have a proactive function to identify breaches, often working in partnership with other agencies such as HMRC and the Police. They currently regulate labour providers but only within specified trade sectors. Intelligence indicates labour market abuse could be high within other sectors such as construction and care.

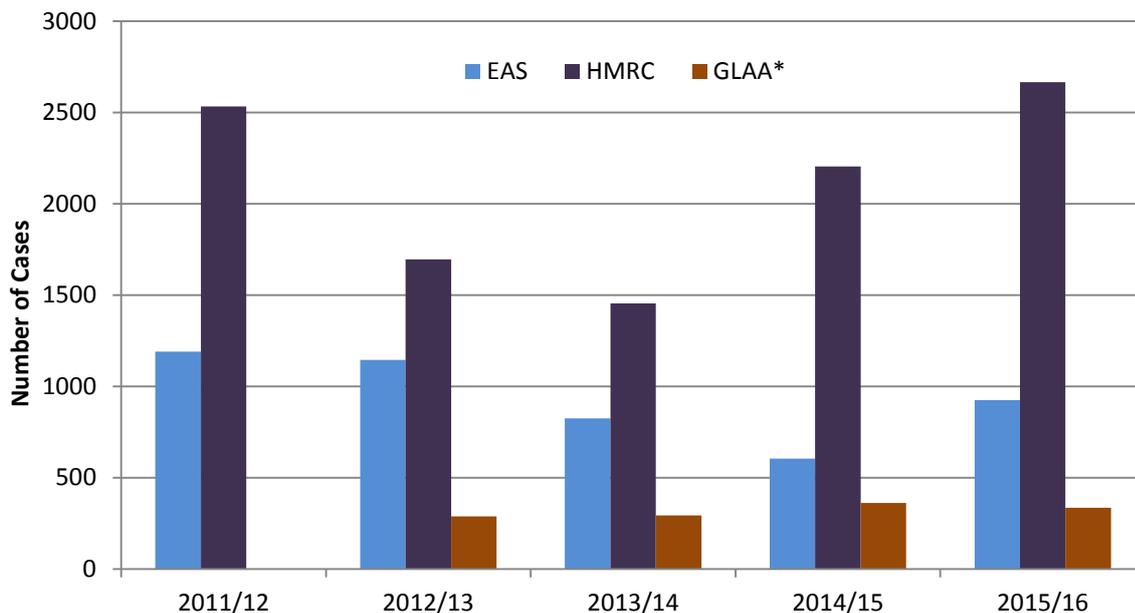
HMRC: The Risk and Intelligence Service within HMRC supports risk assessment using data collected, intelligence and complaints received. Data analysis, risk rules and modelling are then used to build a compliance picture and target operational activity. There are labour market enforcement issues uncovered and dealt with by teams other than NMW/NLW. For example, abuse of employment status is seen across the business population and intelligence indicates that it can be directly linked to exploitation.

Volume of Cases and Breaches

Noting the caveats discussed above, Figure 3 below shows the volume and spread of cases across the three bodies.

Between 2011/12 and 2013/14 both HMRC NMW/NLW and EAS reported a large decrease in the total number of cases. Case volumes for HMRC fell by over 40 per cent over this period but have since returned to 2011/12 levels. EAS case volumes fell further in 2014/15, but have also since risen again to just above 2013/14 levels.

Figure 3: Number of Cases by Enforcement Body 2012/13 – 2015/16

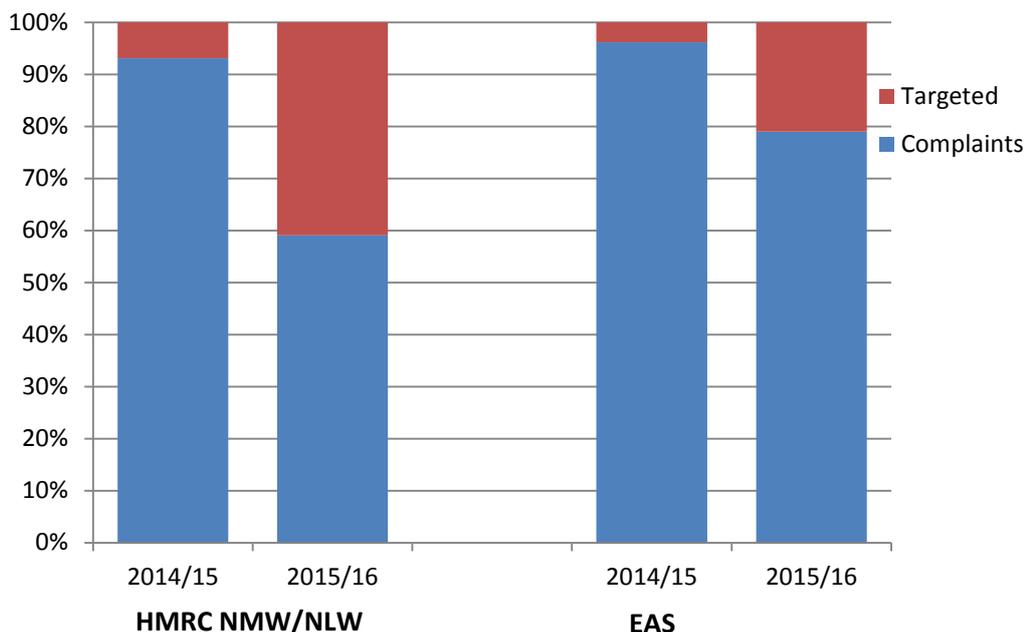


Source: Enforcement bodies management information

Note: The three enforcement bodies differ in remit, size and funding models. The differences in types of cases and investigations carried out means that case volumes and definitions are not directly comparable. GLA cases include application inspections, compliance inspections and enforcement

HMRC NMW/NLW and EAS have both seen a marked shift towards cases resulting from targeted enforcement, shown in Figure 4. For HMRC this is a result of the downturn in the volume of complaints and for both bodies the increase in the number of trained Compliance Officers. GLAA have a steady number of cases with smaller fluctuations seen year on year.

Figure 4: Proportion of Cases by Type of Case 2014/15-2015/16



Source: Enforcement bodies management information

Table 5 presents the caseload data for the three enforcement bodies, including the number of breaches found of labour market regulations. Breaches are, again, defined differently for each enforcement body. Here breaches are defined as number of investigations where arrears were identified for HMRC, infringement of regulations for EAS and licence standards breaches for GLAA.

ASHE 2016 estimates there are around 2 million workers covered by the NMW and NLW and HMRC NMW/NLW has the largest budget of the three enforcement bodies. They deal with a large volume of cases as they cover all sectors across the compliance spectrum. They also have a high number of investigations where arrears were identified. The overall *strike rate* (proportion of cases where arrears were identified) in 2015/16 was 36 per cent, a slight increase from the previous year but 11 percentage points lower than the highest strike rate in 2013/14. *Strike rates* vary depending on how the investigation was initiated and across sectors/worker groups. For example, where an investigation has been the result of a worker complaining directly, the strike-rate tends to be higher than where third-party intelligence or targeted enforcement was the source. The strike rate also fails to reveal anything about the scale of workers impacted i.e. one worker that has been underpaid by a small employer affects the strike-rate in the same way as underpaying every worker in a large company.

EAS enforce regulations governing employment agencies; this covers around 1.1 million workers. Their funding is around £0.5 million. Each EAS case can uncover a breach of more than one of the regulations set out for employment agencies. The number of breaches quadrupled in 2015/16. EAS only had two staff during 2014/15. Staff and funding were moved across to HMRC NMW/NLW to create a new team focussed on enforcing non-payment of NMW in the recruitment sector. Therefore EAS interventions were mostly by letter. In 2015/16 the number of enforcement officers increased to nine, as staff transferred back from HMRC NMW/NLW and they therefore are now able to investigate all relevant complaints.

Table 5: Enforcement Bodies Caseload Data 2011/12-2015/16

Enforcement Body	Measure	2011/12	2012/13	2013/14	2014/15	2015/16
EAS	Complaints received	643	828	714	603	781
	Complaints cleared	784	916	779	581	730
	Targeted inspections	407	229	46	23	194
	Infringements (cleared cases and inspections)	2,146	1,479	320	186	782
	Warning letters issued	602	471	179	133	275
GLAA	Application inspection cases	-	109	120	120	143
	Compliance inspection cases	-	97	101	138	99
	Enforcement cases	-	83	73	103	93
	Licence standards breaches	-	109	123	107	94
	Tier 1 interventions	-	-	20	31	41
	Warning letters issued	-	-	-	29	43
	Enforcement Notices issued	-	-	-	19	32
HMRC NMW/NLW	Total number of investigations	2,534	1,696	1,455	2,204	2,667
	Complaint-led investigations	-	-	-	2,053	1,576
	RIS/Targeted enforcement	-	-	-	151	1,091
	Number of investigations where arrears identified	968	736	680	735	958
	Strike-rate	38%	43%	47%	33%	36%

Source: Enforcement bodies data

Note: The three enforcement bodies differ in remit, size and funding models. The differences in types of cases and investigations carried out means that case volumes and definitions are not directly comparable. GLA cases include application inspections, compliance inspections and enforcement. Complaints received and cleared will not necessarily match in any one year as case investigations may span years.

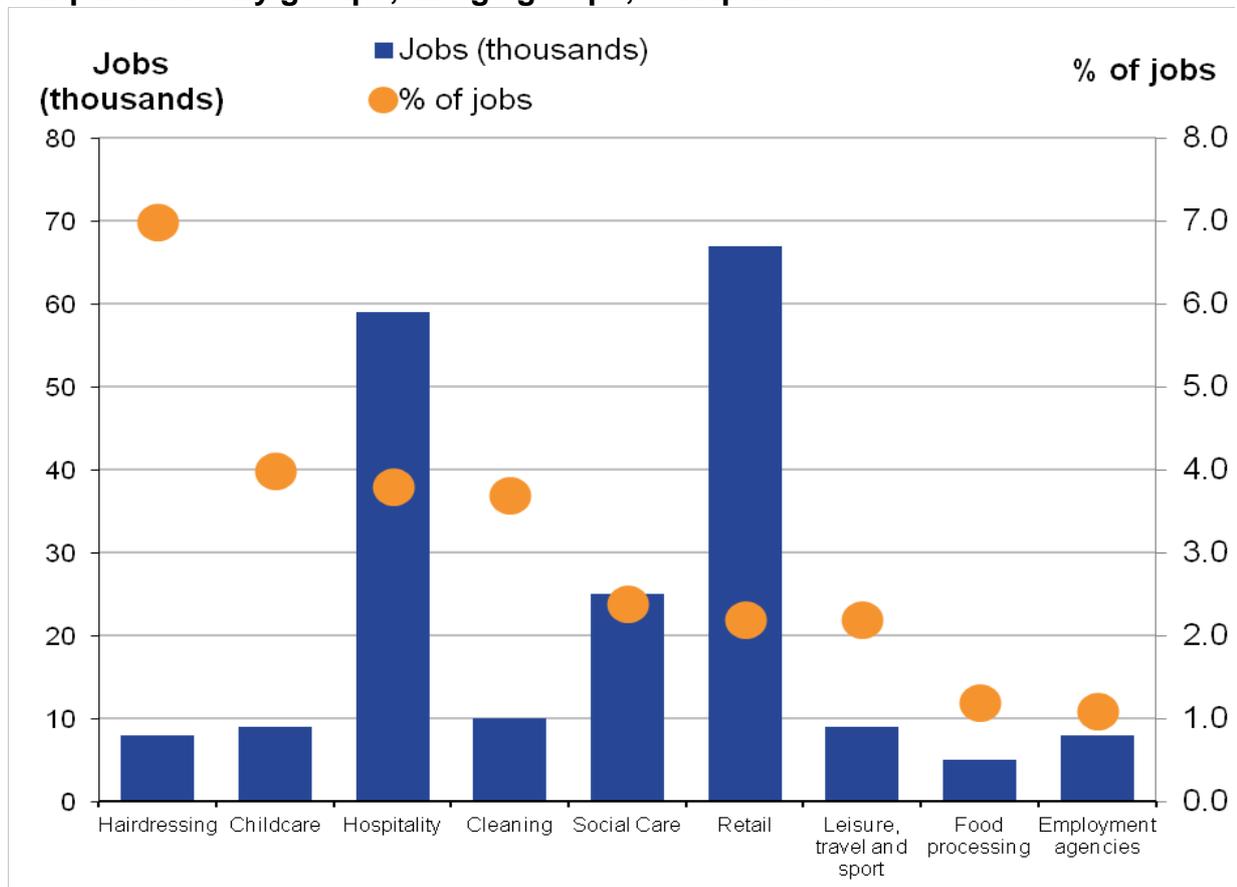
GLAA regulate and enforce labour providers operating within the licensable sectors, covering around 0.46 million workers and receiving funding of around £4.8 million. They have a steady number of Licence Standards breaches from compliance inspections – around 100 per year. ‘Breaches’ are those where the Standard has been recorded as ‘failed’ by the Licensing Officer and there is a sanction. The Standard may have been breached but not recorded as a fail if the issue was rectified or the sanction was not deemed proportionate. GLAA also carry out ‘Tier 1’ interventions – a low level resolution procedure which allows for the immediate rectifications for oversights over non-payments of small amounts of wages etc. The number of these interventions has increased year on year from 32 to 41 in 2015/16. £82,000 was recovered for 2,326 workers through this system.

3.3.3 Further Detail

ASHE by sector

Underpayment of the NMW/NLW – as measured by the ASHE data – appears to vary by sector. Again, as discussed above, ASHE does not offer a direct measure of non-compliance as there are some legitimate reasons for a job to be paid below the NMW/NLW. In percentage terms ‘Hairdressing and Beauty’ has the highest rate of apparent underpayment (7 per cent) of the low paid industry groups, followed by childcare (4 per cent), hospitality (3.8 per cent) and cleaning (3.7 per cent) (Figure 5). But in absolute terms around 150,000 jobs in hospitality, retail and social care combined were judged to be paying below the minimum wage in April 2016.

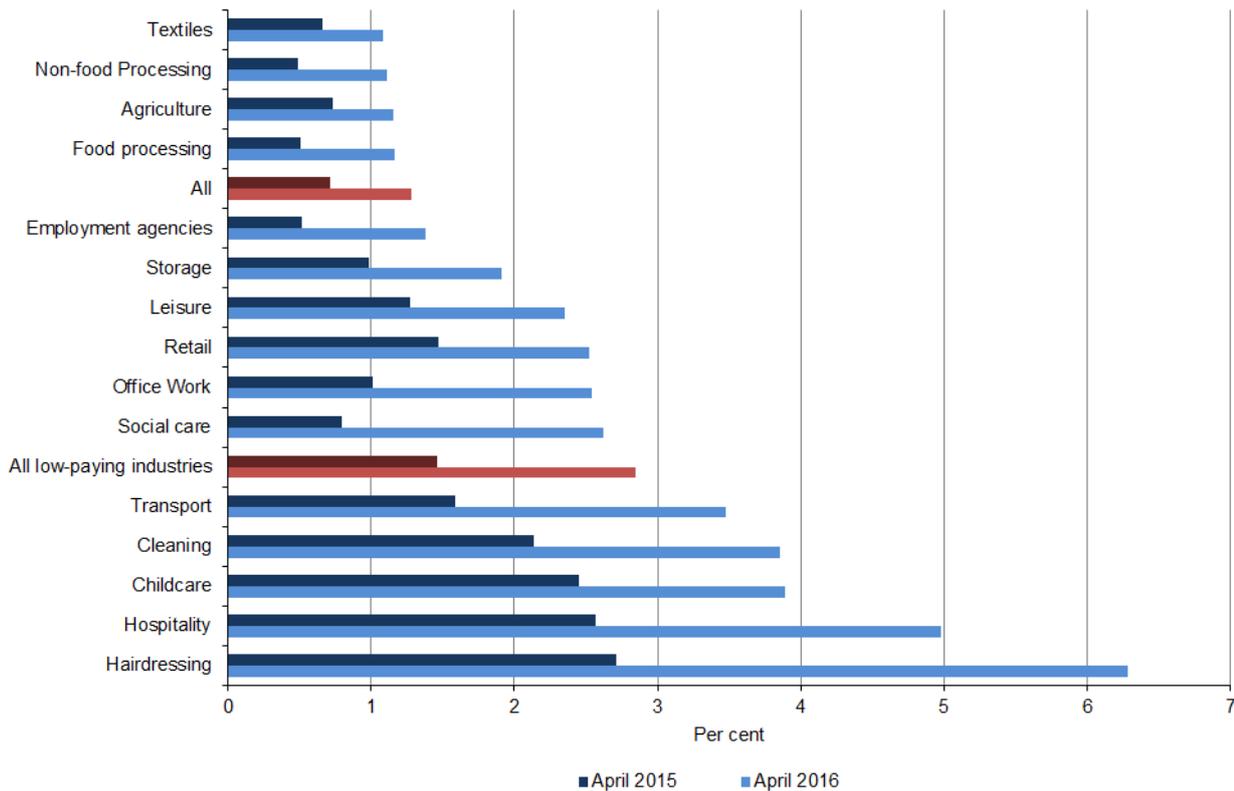
Figure 5: ASHE number and percentage of jobs paid below the minimum wage by low paid industry groups, all age groups, UK April 2016



Source: Office for National Statistics (2016)

When looking at those aged 25 and over, underpayment of the NLW in low-paying sectors as a whole increased from 1.5 per cent to 2.8 per cent between 2015 and 2016. The highest rates of underpayment overall were found in hairdressing, hospitality, childcare and cleaning. These sectors also had large increases alongside social care and transport (Figure 6).

Figure 6: ASHE proportion of employees paid below the NLW, for employees aged 25 and over, by sector, UK, 2015-2016



Source: Low Pay Commission (2016b)

The LPC (2016b) reported that underpayment appears to be a particular problem in smaller businesses. 3.3 per cent of micro businesses (those with 1-9 employees) were found to be non-compliant with the NLW in 2016, compared to around 1 per cent for medium and large businesses. Although recorded underpayment increased for all sizes of firm in 2016, the largest year on year increase was for micro businesses.

Enforcement Activity across Sectors

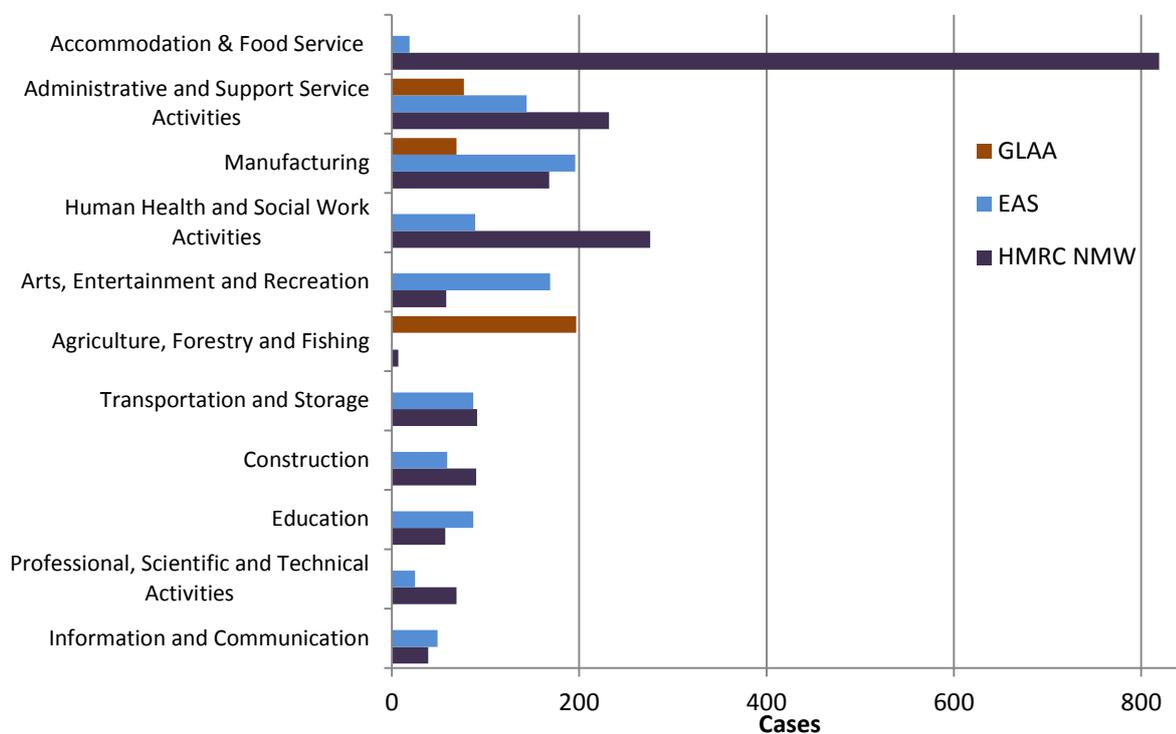
Current case data on sectors is based on high level industry classifications which can disguise lower level specific business activities. Sector data are also collected according to different classifications. We have undertaken some work to map the sectors (Annex A Table 11) to enable better comparison. Work will continue on this to analyse data at lower level classifications.

Bearing in mind, once again, that the three enforcement bodies differ in remit, size and funding models, the differences in types of cases and investigations carried out means that case volumes and definitions are not directly comparable. However, with this caveat,

looking at these high level sectors there are two main sectors where there are cases for all three bodies - 'administrative and support services' (which includes food packaging and domestic workers), and 'manufacturing' (which includes food processing). These are sectors where non-compliance is high across the spectrum of labour market abuse making three-way overlap more likely. Other key sectors for overlap for EAS and HMRC NMW/NLW are health and social care (which would currently not apply to the GLAA).

Some sectors are dealt with exclusively by a single enforcement body - 'Other service activities' (including hairdressing/beauty) has a large volume of cases in HMRC NMW/NLW as it is a priority sector for that body. The other sector where there is minimal overlap is agriculture – the main sector for the GLAA. Figure 7 illustrates the overlaps.

Figure 7: Overlapping Sectors by Enforcement Body, 2015/16



Source: Enforcement bodies management information

Breaches

There are certain sectors where the enforcement bodies find a high number of breaches. The majority of breaches are a result of complaints and therefore there may be sectors with breaches of regulations that are unreported.

For HMRC NMW/NLW the top three sectors for number of cases where arrears were identified have remained constant (accommodation and food services, a priority sector in 2016/17); other service activities (including hairdressing and beauty, a priority sector in 2016/17); and wholesale and retail trade. The health and social care sectors have seen the largest increase, reflecting a greater focus on these sectors (see Figure 8 Annex A).

For EAS the top three sectors (number of infringements) have moved over the last twelve months from industrial, construction and administration to industrial, entertainment and

education – with the number of breaches in the entertainment and education sectors increasing tenfold compared to the previous year. Although this was a large increase in breaches, many such breaches were for two or three agencies following a Facebook campaign in these sectors (see Figure 9 Annex A).

GLAA do not collect data on breaches by sector in a retrievable format. This is a data gap that will be looked over in the coming months.

Regions/localities

Current data on enforcement activity by geographical area varies across the three enforcement bodies. For EAS data is based on the location of the agency. For HMRC NMW/NLW and the GLAA it is based on location of the business. Therefore it is difficult to pinpoint where cases actually occur. EAS data does not cover all cases as some agencies are online, do not have a location or do not give a postcode. There are indications that certain geographic areas may pose more risk of labour market exploitation but nothing upon which we can draw a firm conclusion yet. We will be analysing the geographical distribution of enforcement cases in greater detail over the coming months.

Victims

Our data and information sources suggest a number of vulnerable groups at risk of non-compliance and exploitation. To a large degree this will be determined by the nature of the enforcement legislation. For instance, we saw above how workers by particular age groups may be affected by non-compliance with the NMW/NLW. Here we present a couple of groups, for illustration, where the evidence suggests they may be more vulnerable. Once again, our task over the coming months will be to better understand the population cohorts most affected by non-compliance.

(i) Employment status - the self-employed

Citizens Advice estimates that up to 460,000 workers are bogusly self-employed in the UK (CAB 2015). The information and intelligence we have collected does indicate a sizeable population. Reduced margins due to sub-contracting and some businesses' desire to retain a flexible workforce, who can be laid off if workloads reduce, encourage the hiring of self-employed workers. Many of these workers appear not to recognise that they are being exploited. Others take advantage of the ability to control their tax payments and therefore will not raise an issue with an enforcement body.

The tax Self-Assessment population is rising – explained mainly by an increase in the numbers classed as self-employed - and average income levels declared have fallen. Certain sectors considered part of the growing 'gig' economy are where low-skilled, low paid employment is found. We have seen intelligence which suggests that employment status is manipulated by the employer resulting in restrictions on hours, deductions and deficiencies in sick pay and holiday pay. The Taylor Review into modern work practices, due to report in July 2017, will be a key input into my spring strategy.

Self-employed workers are not covered by the NMW/NLW. Construction is known to have supply chain, labour provider and employment status risks. A joint UCATT, Manchester Business School and Community Links (2011) paper on the construction sector reports:

“Construction Industry Scheme (CIS) critics say it encourages employers to treat people as self-employed who are not really working for themselves.”

The scheme was created by HMRC to minimise tax evasion but the report found that all the people interviewed for this piece of research were either falsely self-employed and working within the CIS system, or working cash-in-hand. The report claims that increasing levels of sub-contracting and agency work contribute to this.

(ii) By nationality

Stakeholders have told us that migrant workers are a significant part of the exploited population, often because they will accept lower pay or do not understand the rules and how to complain due to English not being their primary language. There are no statistics on the proportion of migrants affected by non-compliance because little data is collected on the nationality of workers. Our intelligence does indicate that migrant workers are often employed by non-compliant employers. But so too are people who are UK born. The NCAs Human Trafficking NRM data also shows that although foreign nationals (including Albanians, Vietnamese, and Chinese) are victims of labour exploitation, UK nationals feature prominently too and we must not lose sight of this. Other research, reported by the MAC (2014) indicates that only around 16 per cent of low skilled workers were born abroad, which is only slightly above the share of foreign-born in the labour market as a whole. Without nationality and status being recorded by the enforcement bodies, it is impossible to be certain whether or not migrant workers are disproportionately affected. I will consult in the coming months to see if it is possible to get reliable information on nationality.

3.4 Unreported labour market exploitation

Enforcement primarily focuses on complaint or allegation-led interventions at present. Intelligence indicates that the key statistics presented within this report may well be an understatement of the real level of non-compliance. This will be reported upon further in the spring.

We have seen intelligence which shows some of the reasons why affected workers may not raise complaints, for example they are:

- unaware of the rules (language/cultural barriers can exacerbate this)
- in fear of losing their job
- unsure of their right to work in the United Kingdom
- under duress
- happy with their pay and conditions

At the more serious end of the compliance spectrum, employers use debt bondage and threat to ensure their operation remains out of sight to law enforcement. Workers either leave of their own accord or if they complain they are told they can be replaced. This illustrates the difficult position many people find themselves in. These sorts of issues are receiving increased media coverage and investigation.

In 2015 the hidden economy was estimated to account for 9.4 per cent of GDP (£16.6bn) in the UK, according to Schneider (2015). HMRC estimates that the 2014-15 tax gap due to the hidden economy stood at £6.2bn, which equates to 17% of the total tax gap. The tax gap is the difference between the receipts HMRC actually collects and the amount of tax that should be collected if all taxpayers complied with the letter and spirit of the law.

The Institute of Economic Affairs report IEA (2013), which is co-authored by Schneider, also says that the low paid have a huge incentive to supplement their incomes in the hidden economy, the size of which is linked to rates of taxation. Those nations with higher taxes see a larger hidden economy in revenue terms, according to both IEA (2013) and the National Audit Office (2008). Whilst we cannot assess the scale of labour market non-compliance, the hidden economy is likely to include a higher proportion of affected workers than within the non-hidden economy.

Ipsos MORI (2012) report that just under half of the two million workers estimated to be in the hidden economy were in construction (including home repairs and maintenance), just under a quarter in consumer services such as hairdressing, and 14 per cent in manufacturing. Intelligence indicates that the hidden economy spans many sectors. Activity can be hidden in many ways but the use of cash is commonplace. Cash transactions leave no electronic footprint, making it harder, though not impossible, to detect by law enforcement. It should, however, be noted that the tax hidden economy leaves quite a large electronic footprint through card transactions, use of online intermediaries, websites etc.

3.5 Concluding comments

This chapter highlights the challenge ahead in terms of identifying better evidence and improving our understanding of labour market non-compliance in the UK. Currently, there exist a number of sources of information, but none provides the complete picture to inform our enforcement strategy.

Central to our work in this area will be building the intelligence hub (described in Chapter 4) and seeking to maximise the use of the information streams that the hub will be aiming to capture. To this end we will be relying on information from a variety of stakeholders in both the public and private sectors. We will also want to work closely with academics and research bodies specialising in this area.

What should be understood, however, is that there is unlikely to be an instant 'silver bullet' to overcome these data gaps. It will be about finding new sources of information and data and making better, collective use of existing ones. Initially, we will report on progress in our spring strategy document. But this will inevitably be a longer-term piece of work for future strategy documents. It will also feature strongly in my retrospective annual assessments of the effectiveness of labour market enforcement strategy.

Forecasting for the next three years is a difficult task as there is great uncertainty in this area. The further increases to NMW/NLW in the future may well lead to increased non-compliance by struggling businesses in years ahead. Also, given the unknown status of many workers and the challenge of the unknown non-compliance in the hidden economy, it is unlikely that non-compliance will decrease in the next few years, even with an enhanced enforcement regime. As this area is complex I will return to, and expand on, this in the spring strategy when I am fully able to consult with stakeholders.

Chapter 4

Issues for consultation → Strategy

I was appointed in January 2017. This is an interim strategy document. The first comprehensive labour market enforcement strategy will be produced in the spring, adhering to the commitment set out in the Immigration Act 2016. This allows a further period of detailed consultation with stakeholders and others as it is only with the support of all concerned that we can work towards reducing non-compliance effectively.

This chapter sets out the key issues for consultation over the coming months. These have been identified from the data and intelligence collected, plus our discussions with stakeholders. This covers three broad areas:

- the LME Intelligence Hub
- issues common to all three enforcement bodies
- issues particular to the three principal enforcement bodies.

4.1 Intelligence Hub

4.1.1 Introduction

In this section we describe the requirement for the Intelligence Hub and the progress made in developing a fully functioning hub. There is already a great deal of co-operation and information sharing among three enforcement bodies. But the Government has concluded that the Director will only be able to set an effective labour market enforcement strategy if it is evidence-based. There is greater benefit to joint working between enforcement bodies if they share a coherent view of the nature and extent of non-compliance in the labour market. Giving the Director and the three enforcement bodies the powers to routinely share data and intelligence establishes a more formal basis to improve current information sharing practice.

Development of the Intelligence Hub has been split into three phases. First a shadow intelligence hub was set up. Analysts from the Directors office worked on the initial strategic intelligence report, developed contacts with key law enforcement partners, developed data sharing processes and supported the work on the legal gateways. The second phase involves bringing in more analytical resources and intelligence officers. This is to ensure that we have the right balance of staff to fully analyse the intelligence and information that we are gathering. This will be crucial in assessing the scale and nature of the non-compliance. The final phase will be a fully functioning intelligence hub that can produce reports and outputs described below.

4.1.2 Background

The Immigration Act 2016 paved the way for an Intelligence Hub that will consume, process and produce information and intelligence assets relating to non-compliance within the labour market.

Box 5: Section 8 of the Immigration Act 2016

8	Information hub <ol style="list-style-type: none">(1) The Director must gather, store, process, analyse and disseminate information relating to non-compliance in the labour market.(2) The Director may request any person by whom, or by whose officers, labour market enforcement functions are exercisable to provide the Director with any non-compliance information specified or of a description specified in the request.(3) "Non-compliance information" means information relating to non-compliance in the labour market which the Director considers would facilitate the exercise of any of his or her functions.(4) A person by whom, or by whose officers, labour market enforcement functions are exercisable may request the Director to provide the person, or an officer of the person, with any enforcement information specified or of a description specified in the request.(5) "Enforcement information" means information which the person making the request considers would facilitate the exercise of any labour market enforcement function of the person or of an officer of the person.(6) A person who receives a request under this section must respond to it in writing within a reasonable period.
----------	---

Delivery was initially owned by the joint BEIS/Home Office Labour Market Enforcement Programme and it is now my responsibility. The remit covered the development, as appropriate, of a secure IT solution that will allow the bodies and the Director to share information. This should drive up compliance and protect workers and businesses. Delivery of greater compliance will be achieved through the following activities:

- carry out enforcement across the whole spectrum of breaches of employment law in a more effective way
- develop a single set of priorities across the enforcement bodies in which there is a clear objective of reducing labour market non-compliance, combined with a single intelligence-led view of risk in order to focus efforts in the right place
- build a stronger evidence base of the nature of non-compliance to inform future interventions
- ensure more responsive allocation of resources and more concerted and co-ordinated actions across the enforcement bodies. Ensure more flexibility among the bodies to target their enforcement appropriately, work together to be more efficient as well as effective
- put in place the necessary tools to implement the strategy.

The perception of the role of the Intelligence Hub has been described by BEIS/HO sponsors in the following ways:

"The Intelligence Hub has a role in looking across the info/Intel and producing a strategic level picture that looks across labour market exploitation/enforcement."

And further

"...painting a clear picture of non-compliance and driving an enhanced operational response."

The three principal enforcement bodies – GLAA, EAS and HMRC NMW/NLW - provided the focus of the information/intelligence sources fed into the shadow Intelligence Hub to develop the initial Strategic Intelligence report (explained below). The intelligence gathering has highlighted the difference among the bodies in terms of intelligence and analysis capacity. In particular EAS have very limited resource to work on intelligence issues and will benefit from the greater capacity of the Intelligence Hub to do this.

We recognise that the Gangmasters and Labour Abuse Authority have a wider role in tackling modern slavery offences involving labour exploitation. It is the latter, high-harm type of abuse, where we would like to make sure that we are sharing appropriate information on trends and risk factors with the relevant authorities. There are further stakeholders such as Home Office Immigration Enforcement, the NCA, Modern Slavery National Threat Group who have also provided strategic assessments.

4.1.3 Initial phase: June – December 2016

The initial phase had four main objectives. These were to consider:

- the type of Intelligence Hub model we would like to introduce
- the staffing requirements, (where we decided on recruiting two analysts)
- a comprehensive evaluation of the data requirements to get a more detailed understanding of the data landscape
- the evidence base to make a decision as to whether, and to what extent, the hub should be supported by an IT solution at that stage.

Whilst the objectives of the three principal bodies are common in theme – protecting workers against labour-related abuse – there are distinct differences in their focus, operation and regulation. Work has been completed on the process by which the bodies can best share data, information and intelligence. We have been able to work collaboratively and a process for regular data sharing has been agreed.

An initial report has been developed which is based on the current and historical assessment of the key threats and risks identified by the respective bodies. It draws on additional intelligence that may provide relevant insight into the extent of labour market exploitation. Due to sensitivities around intelligence and sources it may be shared with key partners but will not be published. It will be revised as the Intelligence Hub widens its intelligence flows and develops its understanding of labour market non-compliance. Its primary purpose is to inform the development of the strategy and setting of priorities.

The content of the report comprises relevant material from the GLAA's Strategic Assessment, HMRC's Risk and Intelligence Service, and some information and intelligence from EAS. As we develop the current iteration we will seek to include material from the National Crime Agency and Home Office Immigration Enforcement where information can be shared.

The fact that the report is based on current information means that it only reflects what each of the bodies already knows about labour market non-compliance, but for the first time that information is being brought together to create a strategic overview. As the capacity of and data flows into the Intelligence Hub increase, the strategic intelligence picture will incorporate more robust trend analysis and identification of risk.

4.1.4 Development phase: April - December 2017

My requirements and preferences for the Intelligence Hub have been defined and agreed for the development phase. This includes regular information feeds between the Director and enforcement bodies. The introduction of the Strategic Coordination Group (SCG) will develop and ensure the enforcement bodies build upon joint working and information sharing.

The Labour Market Enforcement Strategic Coordination Group (LME SCG) is the forum that brings together front-line, strategic and risk expertise from HMRC NMW/NLW, GLAA and EAS to identify potential joint enforcement activity involving the three enforcement bodies, and address issues that may affect closer cooperation. It is also the body that will lead operational delivery by co-ordinating activity and learning lessons from cross agency operations. I will consult over the coming months to determine if the membership of this Group should be expanded e.g. to include police or NCA involvement.

There will be an improved flow of intelligence leading to stronger evidence base of non-compliance. This will include partners' intelligence and NGO's input. A process will be developed to monitor repeat offenders. During this period we will use the MoRiLE risk assessment methodology (see below) to provide the first intelligence-led view of risk in non-compliance across the labour market.

From the wider perspective the Intelligence Hub will act as a central point of contact for all relevant intelligence and information on labour market non-compliance. This will come from other government departments, law enforcement partners including the NCA, police forces, NGO's and from other existing local partnerships. From my perspective, how we work together and collaborate will be crucial to developing our knowledge and insight into the most serious forms of non-compliance. It is clear from the initial intelligence gathering phase and stakeholder engagement involving these partners that there is a communications gap in how instances of labour non-compliance can be routinely reported. This leads to some instances of non-reporting, or the receiving body not having the 'map' of where to send this information. I intend to address this with a better process for intelligence flows across labour market non-compliance.

4.1.5 Fully operational Intelligence Hub phase: January 2018 onwards

During the final phase the Intelligence Hub will become fully operational. The aim will be to have a group of analysts and intelligence officers with the right skills to provide a full range of analytical knowledge and specialist skills. This means that the strategic intelligence picture will be continuously assessed, with feedback loops in place to ensure that all relevant intelligence is being captured. This will provide the evidence base to develop an increasingly mature picture of intelligence across the labour market. With the legal gateways and protocols in place there will be regular information exchanges with other interested parties. This will provide me, and all relevant parties, with a central point to routinely share information relating to non-compliance in the labour market. A process of assurance and oversight will be in place, to complete active data quality audits, and assurance that all legal requirements of storing and handling data are adhered to. The flow of data including management information should lead to better standardised reporting for boards and other groups.

Once fully operational the Intelligence Hub will have a number of potential outputs. These include:

- summary statistics such as information from all three enforcement bodies on undertakings and orders
- a range of trend reports broken down by sector and region
- risk and threat reports to identify and prioritise threats (using trend data to create risk models)

- high level summary reports that should include estimates of labour market non-compliance per sector. Intelligence summary reports to inform the bodies of current status
- a series of intelligence reports that will include a fully developed Strategic Assessment, this is an overview of the scale and nature of labour market non-compliance used to inform my strategic objectives
- a control strategy that sets out priorities and objectives
- intelligence requirements that looks to highlight any intelligence gaps and what intelligence should be collected
- ad hoc intelligence questions/requests, including from the three bodies, and wider LE or partners.

4.1.6 MoRiLE: has non-compliance increased or decreased?

The national Management of Risk in Law Enforcement (MoRiLE) prioritisation process uses a structured methodology and matrix to enforce a consistent approach to the identification of priorities across agencies. All law enforcement agencies in the United Kingdom are recognising the benefits of adopting the same process to measure changes in risk, year on year.

This measurement tool was developed in the United States and has gained international recognition. We have worked with the UK experts in this field, developing a matrix applicable to the labour market, to help us baseline the risk picture. This incorporates assessment of:

- harm to individuals, communities, the environment and the organisation, also in terms of financial impact (to victims and the organisation) and public perception
- likelihood in terms of frequency and volume of offending, plus the strength of the intelligence picture around each crime type
- the organisational position. Do we have the skills, tools and operational capacity to effectively address this issue?

The highest impact areas highlighted from our initial matrix of over 600 items are:

For people ● Pay ● Other employment conditions ● Employment status
 For business ● OCGs ● Small/medium businesses ● Hidden economy
 Sectors ● Construction ● Agriculture & fisheries ● Accommodation & food

The national experts have reviewed this work. They are happy that it is in line with the matrices of other enforcement bodies and that it meets the objectives of the process. Tracking the scores year on year, and at specified intervals in between, will be important. A table, such as Table 6 below, could be used to highlight any changes in a simple format.

Table 6: Illustrative Table of MoRiLE Outcomes

MoRiLE category	Priority area	Change	Comment
Sector	Construction		Increased supply chain issues identified
	Agriculture		
	Accommodation		Increased enforcement activity

Over the coming months we intend to discuss further with the principal bodies how this should reflect their perspective on risk and how we can work together to ensure this works as an effective measurement tool. One possibility is that they each present their own matrix, which is then combined to give an overall measure.

As we highlighted in chapter 3, the Intelligence Hub will help fill a major information gap and is intended to play a central role in helping us arrive at better understanding of the scale and nature of non-compliance in the labour market. Once again, though, it is important to remember that the benefits from a fully operational Intelligence Hub will mostly be realised from 2018 onwards.

4.2 Overarching issues for the enforcement bodies

In this section we consider a number of issues that are common to all three enforcement bodies. This is done in two parts.

First, we address the question of how best to understand and unearth an improved and more complete picture of non-compliance. This ranges from raising awareness and improving communications such that workers are better informed about their work rights and where they can go to for help, to how to get at those parts of the labour force where non-compliance is not currently being reported. It then considers the balance between reactive and pro-active investigations: that is, whether the enforcement bodies should focus more on more targeted enforcement activity especially around offences at the more serious end of the non-compliance spectrum. Finally this section looks at the new enforcement regime of labour market enforcement undertakings and orders, which came into force in November 2016.

Second, we consider issues around joint working between the bodies. The focus for our consultation in this area will be on the following: an evaluation of the impact and effectiveness of the work done by the three bodies to tackle non-compliance; how the total resources for labour market enforcement are currently distributed across the three bodies and whether any redistribution is merited to achieve improved enforcement outcomes; how

the three bodies work with other bodies and organisations to tackle issues of common or overlapping concern.

4.2.1 Gaining an improved understanding of non-compliance

Raising awareness and communications

There are many routes for a worker to raise a concern and receive advice or redress. This sometimes leads to complaints not being received by the appropriate enforcement body either as quickly as they should or to not being received at all. This impacts not only upon the risk awareness and data held by the enforcement body but could also reduce a workers' confidence in making a complaint. This is exacerbated by the lack of a clear and structured way for the stakeholders and the enforcement bodies to pool their knowledge and intelligence.

This was highlighted as a very important issue among stakeholders. For example, in the stakeholder survey the Recruitment and Employment Confederation (REC) stated:

“This [raising awareness] is critical in order to ensure that workers know the relevant bodies to complain to, and for businesses to know that enforcement bodies are active and that their competitors won't get away with bad practice and undercut the market”

This section sets out the current routes for complaints, explores why some workers do not report issues, the degree of awareness among enforcement bodies and then specific areas for consultation.

(i) Acas

The aim of advisory, conciliation and arbitration service (Acas) is to support good workplace relations between employers and workers. It has a telephone Helpline, which provides guidance on issues such as resolving problems at work and understanding employment rights. The Acas Helpline handles over 900,000 calls each year. Over 80,000 of these relate to non-payment of wages. The majority of these callers are seeking advice with only a small proportion (around 3,500) referred to HMRC (3,200) or EAS (300) as complaints.

From April 2015 Acas assumed responsibility for handling calls previously received by the Pay and Work Rights Helpline (PWRH) funded and managed by BEIS, integrating the service into its own Helpline. From this date, with the exception of those submitting complaints directly online, all callers who previously contacted the PWRH, whether seeking advice or wishing to direct a complaint to an enforcement body, have been directed to the main Acas Helpline telephone number. These calls on pay and work rights topics are handled alongside all other Acas Helpline calls with advisers explaining the different options available to callers and, if the customer wants to make a complaint to an enforcement body, transferring the caller directly to the relevant body.

When this change occurred, the number of referrals to the enforcement bodies fell. This was to be expected because it can take time to embed a new delivery stream. Through a programme of training and re-issuing of guidance, referrals to HMRC NMW/NLW team have now increased, although referrals to EAS remain low. This is currently being looked at by EAS and Acas. Acas work closely with the enforcement bodies and any issues are fed back and remedied. However, it was also the case that call volumes were already falling to the old PWRH before its closure.

User satisfaction with the Helpline is high; according to a survey by IFF Research (2016), the majority of callers seeking advice on PWR issues (95 per cent) were satisfied with the service they received from the Acas Helpline (43 per cent were extremely satisfied).

The survey also found that 9 per cent of employee callers (seeking advice on PWR issues) had made a complaint to one of the enforcement bodies; half of these had done so before calling Acas the other half after the call. 12 per cent had not yet made a complaint to one of these bodies but were planning to do so. Approximately four out of five callers surveyed (79 per cent) had neither made nor planned to make an enforcement complaint.

Because Acas is primarily a conciliation service and handles a wide range of calls and issues (not just enforcement issues) we will consult on issues such as routes in, how calls are handled and the mechanism for transferring calls to the relevant agency.

(ii) Other routes into enforcement bodies

Workers affected by non-compliance have many other routes too. For example, Citizens Advice (CA) provides free, confidential and independent advice to people on a wide range of issues including work related problems. In 2015/16 they dealt with 380,000 employment-related issues, where it was estimated that 165,000 were victims of mistreatment. CA provide advice online, by phone and in person to employees on basic rights including pay, contracts, holiday and sick pay, agency workers' rights, flexible working and parental rights. The CA may refer workers to Acas or directly to the enforcement bodies.

In our stakeholder survey CA stated:

“We help hundreds of thousands of people with employment enquiries each year and where possible we are able to direct them to labour market enforcement bodies. However there are many more people who do not come to see us and are unaware of and therefore unable to action to enforce their employment rights.”

Another route is through trade bodies. These organisations have a number of functions including promoting standards and codes of practice. Through this they may receive complaints from employers or workers.

Unions raise awareness of employment rights with their members and represent members working in a range of sectors. Unions also campaign for better working conditions and pay. They play a key role in advising their members on employment issues and may receive complaints that are fed through to the enforcement bodies.

In the initial stakeholder survey the TUC had strong views on awareness:

“At present, particularly outside unionised workplaces, there is poor awareness of basic employment rights and even lower levels of awareness about how those rights are enforced”

An online pay and work rights complaints form was launched by government in January 2016 for reporting information relating to the national minimum wage, employment agencies, gangmasters or working hours. Complaint forms are then directed to the correct body to deal with. The GLAA also have a separate page on their website which asks

people to provide information about any labour provider who is exploiting the welfare and rights of workers.

The number and diversity of channels for reporting may lead to some confusion and the roles of the different organisations may not be clear to workers. This is an area we will consider further to see if more can be done to encourage workers to come forward when they have a genuine grievance.

(iii) Unreported non-compliance and exploitation

It is clear from the intelligence picture and stakeholder opinion that there is a group of workers who are not reporting incidents for a myriad of reasons. The worker may be: unaware of the regulations; in fear of losing or seriously affecting their job; unsure of their right to work in the UK; under duress or benefiting from the job despite breaches.

We need to develop our understanding and approach to include those who do not raise concerns formally. Such workers require a voice. This can be achieved by promoting the work of the enforcement bodies, explaining clearly how workers can get advice, how they can report non-compliance and where they can get support. In particular support should be given to groups vulnerable to exploitation such as migrant populations. This will help to confirm that workers have all the information and guidance they need to report concerns, should they wish to do so. We will be seeking views on this.

Balance: individual complaints (reactive) or proactive targeting?

Much of the compliance work deals with breaches at the less serious end of the compliance spectrum. The enforcement bodies deal with all allegations and complaints they receive and this should continue. There is, however, a desire and need to uncover more abuses proactively, through developing intelligence and sharing this among stakeholders. The Intelligence Hub, discussed in the early part of this chapter, has a central role to play here. In time, this will have an impact across the stakeholder landscape and is likely to lead to uncovering serious breaches across all compliance areas and tackling the whole compliance spectrum.

EAS and GLAA only directly tackle labour market compliance, whereas HMRC has a risk function across all UK businesses and individuals for tax purposes. It collects information and intelligence from this function, which, although not primarily labour market focused, yields insight into non-compliance. It is important that we understand and consult on how all relevant strategic information can, where possible, be made available to the Intelligence Hub in order to benefit the wider landscape of labour market enforcement activity.

New regime of labour market enforcement undertakings and orders

The 2016 Immigration Act made it easier for law enforcement to deal with employers who subject their workers to more serious forms of non-compliance by

“deliberately, persistently and brazenly committing breaches of labour law and failing to take remedial action” (BEIS/Home Office (2016a)).

Existing legislation provides for differing remedies at each of end of the spectrum. For example, HMRC can impose a civil penalty, whereas EAS and GLAA will seek compliance with the ability to move to enforcement action if needed. At the other end of the spectrum criminal penalties are available for more serious offences such as repeated and deliberate

underpayment of NMW/NLW or Modern Slavery Offences. GLAA can revoke licences and seek prosecutions, and EAS can seek to prosecute both individuals and corporate bodies, and/or seek to prohibit individuals, which prevents them from operating, owning or being involved in the running of an agency. The new regime of undertakings and orders fills the gap in the middle of the spectrum (see BEIS/Home Office 2016b for more detail).

A new type of enforcement order was introduced in November 2016 supported by a criminal offence for non-compliance. Where there is reasonable belief that a trigger labour market offence has been committed (e.g. business using unlicensed gangmaster, employment business charging work finding fee), the existing enforcement bodies now have the power to request a business enter into an undertaking to take steps to prevent further offending. Where a business has refused to give or failed to comply with an undertaking, the enforcement bodies are then able to apply to a court for an enforcement order.

The order requires the business to take steps to avoid further labour market offences. An order is also available as a sentencing option where a labour market offence has been committed. Breach of the order is an offence, punishable by imprisonment of up to 12 months following summary conviction (by a magistrates court for less serious offences) or two years following conviction on indictment (by Crown Court).

Given the rather modest number of prosecutions in recent years it will be important for the enforcement bodies to make proper use of this new weapon in their compliance armoury. I will be discussing this with them in the coming months. My first Annual Report will assess the impact of my first labour market enforcement strategy and will include an initial evaluation of this new enforcement order.

4.2.2 Tackling non-compliance through joint working

Joint working and the three enforcement bodies

During 2017 I intend to consult the three enforcement bodies, and other stakeholders including NGOs, to assess the current extent of joint working, with a view to further strengthening this area. There is some evidence to suggest that businesses willing to bend the rules in one area, e.g. not complying with National Living Wage, are more likely to commit breaches in other areas, e.g. health and safety. This causes unfair competition. Joint working involves both data sharing and joint operations.

The aim is broader and stronger partnerships to reduce non-compliance, abuse and criminality. There are some obvious partnerships e.g. GLAA working with HMRC. Some are less direct, such as working with the Insolvency Service or with local authorities, but will boost enforcement and reduce crime. Better co-ordination brings benefits in terms of efficiencies and focus, not only for the enforcement bodies but for employers too. Co-ordinated activity means higher visibility coupled with much less disruption for employers and workers rather than multiple days of activity by different bodies.

Responding to our initial stakeholder survey, the CBI stated:

“Risk-based and intelligence-led enforcement helps keep the focus on, and can be delivered by agency co-operation. It enables targeted action to be taken against the minority of firms that are non-compliant, delivering the greatest impact, while avoiding burdening the compliant. Other enforcement mechanisms, including inspectorates and

licensing, can be costly to manage as they are imposed on businesses regardless of their compliance history or potential risk.”

We recognise that some forms of non-compliance are part of a larger scale, serious organised criminality. Responsibility for such activity sits with other bodies such as the National Crime Agency.

The three enforcement bodies all have huge expertise in their respective fields. The Home Office and GLAA believe there has been a change in the nature of labour market non-compliance over the last ten years, with a shift of abuses of employment regulation towards increasingly organised criminal activity. However, some intelligence information and stakeholder views suggest everyday non-compliance remains prevalent. Therefore more work will be done in this area to make sure we strike the right balance in the spring strategy.

Closer co-operation is also a corollary of giving wider powers to the Gangmasters and Labour Abuse Authority. As each of the bodies have expertise in a specific area of labour market legislation, it was decided at an early stage not to dilute this expertise by giving each of them the powers of the other two. There is a particular need to ensure consistency in and compatibility of enforcement now that the GLAA has powers to act in the EAS and NMW/NLW space. The bodies need to liaise to ensure that the best enforcement tool is applied in the circumstances, taking into account any previous contact with the business concerned. For example, where there is a range of labour market trigger offences, the GLAA will be able to implement the new regime of LME undertakings and orders in respect of all the offences. The Director’s strategy will be an important component to determine the best course of action when the bodies are prioritising activity either individually or jointly.

A joint working operating model has now been set up, with a legal framework and intelligence-sharing gateway. There is a Strategic Coordination Group to oversee the process. We have seen that as the operational relationship among the enforcement bodies has developed, so has the approach to co-ordinating and planning joint operations, the information/intelligence/research used to ensure efficiency and the effectiveness of the operations.

Potential benefits of joint working were identified by the three enforcement bodies as follows:

- increase the accountability of organisations through increased visibility of organisational responsibility, resources, outcomes and ownership
- reduce duplication and fragmentation of services by eliminating contradictions or tensions between policies, programmes or interventions, which will result in more efficient deployment of resources through the elimination of duplication, securing better value for money and achievement of economies of scale
- highlighting any potential gaps in the current enforcement regimes
- increase public awareness of and participation in the labour market abuse reduction initiatives
- reduce the regulatory burden on business of multiple visits by multiple enforcement bodies on multiple occasions
- provide visual evidence of joined up government working

- creating a “one stop shop” for labour market compliance and enforcement by developing strong communication links to ensure the timely and effective hand-off of information/intelligence between organisations. Thus enabling swift evidenced based enforcement action.

The three bodies all cite benefits from having a more closely aligned partnership working arrangement in place. There is evidence that the work conducted in planning and conducting joint operations has started to alter the way the bodies collectively do business e.g. better data-driven decision making, with a goal-focused emphasis on problem solving and prevention.

Properly debriefing and undertaking lessons learned exercises after each operation is crucial to the success of joint working. Each of the enforcement bodies now understands that their “business as usual” models of working will not necessarily be the correct model for joint operations.

Wider joint working to tackle the hidden economy and supply chains

Beyond joint working between the three enforcement bodies, there is the question about the need for and the potential benefits derived from working with other organisations. This is particularly the case where the organisations concerned have some degree of overlapping interest, where they might be able to share information and possibly resources, to help each other in their respective objectives.

(i) Hidden Economy

HMRC are the primary government department charged with tackling the hidden economy. We know that abuse of workers takes place in the hidden economy often involving the most serious cases. HMT and HMRC (2015) reports “*HMRC have more than 600 staff in our specialist hidden economy teams who identify those who should be paying more tax, working with wider compliance teams, aided by risk and intelligence experts.*”

They are also working with others to unmask the hidden economy including:

- Trading Standards, the Vehicle and Operator Services Agency and the Department for Work and Pensions to identify uninsured drivers and benefit cheats
- Local Authorities and Home Office Immigration Enforcement to investigate exploitation of migrant workers and multiple occupation of houses
- London boroughs and police to tackle rogue landlords charging cash-in-hand rents and exploiting vulnerable people living in sub-standard or unsafe homes

Over the coming months, further discussions with stakeholders will help to shape how we approach the hidden economy within the labour market strategy.

(ii) Supply Chains

Transparency in supply chains is a nice example of an issue where some joint work by the three enforcement bodies and other stakeholders will yield dividends. The Independent Anti-Slavery Commissioner and the GLAA have a vital role in this area. The Taylor review is also investigating it. It is very important to state that most businesses wish to be compliant with labour regulations and desire that their supply chain firms are also

compliant. Work is being done by businesses to improve transparency. Two initiatives under the banners 'Stronger Together' and 'Fast Forward' are examples of trade groups looking to improve visibility and compliance of their supply chains.

Major retailers are, understandably, very keen that organisations in their supply chain comply with labour market regulations. This can be done via voluntary accreditation but consultation with stakeholders by BIS in October 2015 found some had concerns over reliance on voluntary schemes. There were fears it would cause a significant amount of work and not be effective (BEIS/Home Office (2016a)). The Association of Labour Providers (ALP) and NSF International (who provide assurance and certification services), are currently developing a global labour provider certification scheme called Clearview. A key question here is whether such voluntary accreditation should be industry or state-led? The issue of licensing is also explored further below.

The fact remains that labour market non-compliance remains a feature of supply chains. Examples of non-compliance exist throughout the supply chain in construction, cleaning and security and intelligence indicates many problems across sectors, often involving cash-in-hand payments and self-employment. Recent media reports alleged serious breaches of labour regulations by clothing manufacturers supplying household-name retailers. Sometimes sub-contracting occurred without the knowledge of the retailer. At one manufacturer exploitation was quite open. Pay was below the NMW/NLW, the right to work in the UK had not been established, and various Health and Safety directives were being flouted.

We will consult widely on this matter as it will be an important component of the spring strategy. This will help further strengthen the important enforcement activity of the Independent Anti-Slavery Commissioner and the GLAA in achieving supply chain transparency.

Evaluation, impact and effectiveness of enforcement activity

A key part of the initial consultation will essentially be assessing what difference the three enforcement bodies are making – either individually or through joint working – in terms of tackling non-compliance.

As well as examining the key performance figures for each of the three bodies, we need to understand how their activities impact on the wider issue of reducing non-compliance generally. Tackling the data and information challenges highlighted in chapter 3 will also be key to this.

Related to this is gaining a better understanding of the impact different enforcement interventions have on improving the compliance landscape. For instance, is raising awareness (e.g. publicity campaigns) more effective – in both cost and worker protection terms - than higher profile deterrents such as prosecutions? Moreover, there is a question as to how government, business and third sector organisations can better work together to help prevent non-compliance in the first place.

Size and distribution of enforcement resources

Following on from the above – and given that resources for labour market enforcement are paid for by the public purse – the next question is whether the enforcement activities as currently undertaken represent the best value for money. The National Farmers' Union have stated:

“In our view, the success of the new Director is likely to be influenced by (i) the level of funding and resource available to him, and (ii) the knowledge and expertise both he and the staff of the enforcement bodies possess.”

Equally, there may be an argument to seek to increase resources overall, though this will of course require strong evidence to support this. Stakeholders have expressed concern around the effects of insufficient resourcing, particularly for the GLAA considering their extending remit. TUC stated:

“fears that if additional funding is not made available then resources will be diverted from existing compliance and enforcement work.”

They have also noted that:

“If no or only limited new funding is made available, the Director will be forced to reallocate existing resources away from existing work, including application and compliance inspections in GLA licensed sectors, ensuring decent treatment of agency workers, and tackling high volume non-compliance with the NMW, towards investigating and prosecuting labour exploitation and organised criminal activity.”

The Immigration Act 2016 requires me to comment on resources devoted to enforcement across the three bodies. It is important to note that HMRC have seen their enforcement resources double in the last two years and the GLAA have been allocated extra resources in 2017 to reflect their new powers. The resources have been allocated after much thought from both officials and Ministers. Therefore there must be very good reasons if I am to suggest altering the present distribution of enforcement resources. I will consult with the three bodies and other stakeholders, including employers, unions and NGOs on this important matter.

The key question for the consultation is: does the present distribution of enforcement resources minimise non-compliance? Here non-compliance has two dimensions: the number of cases and their severity. In the meantime the three bodies will operate with their present enforcement resources. If I conclude extra resources are required to boost compliance this will be stated in the spring strategy document.

4.3 Specific Issues for the enforcement bodies

4.3.1 HMRC

Balance along the penalty spectrum

HMRC has, essentially, five potential levers to enforce compliance with the NMW/NLW:

- getting the wage arrears paid to the worker
- civil penalties of up to 200 per cent of the arrears owed per worker up to £20,000
- naming scheme under which BEIS will name all employers who owe their workers over £100
- the new regime of labour market enforcement undertakings and orders
- criminal investigation possibly resulting in a prosecution by the Crown Prosecution Service (CPS).

HMRC enforce the NMW/NLW on behalf of BEIS under a Service Level Agreement (SLA), reviewed annually. This sets out the top Ministerial priorities for HMRC to take into account

when planning their annual programme of work, and the targets against which these will be reported. It also sets out the roles and responsibilities of the parties.

The 2016/17 SLA includes priorities around: promoting compliance by raising employer awareness; investigating complaints including various time taken targets; and targeted enforcement. For understandable reasons the SLA does not go into priorities among the potential penalties.

I will therefore consult BEIS, HMRC, the Low Pay Commission (LPC) and other stakeholders including trade unions and employers on the appropriate balance among these levers. This is of key importance given the introduction of the NLW and the boost in compliance and enforcement resources provided to HMRC in the last two years. The NLW is targeted to be around £9 an hour by 2020. This will increase NMW/NLW coverage from 5 per cent of the workforce in 2015 to almost 14 per cent by 2020 (LPC 2016a). Correspondingly enforcement resources rose from £9.2m in 2014/15 to £20m in 2016/17.

The weakest HMRC lever along the compliance spectrum is getting any **arrears paid to the worker** in the non-compliant firm. The Low Pay Commission states that in 2015 non-compliance using ASHE data (single pay period in April) *“could affect somewhere around 100,000 people plus an unknown number in the informal economy”* (LPC 2016a). In 2015/16 (full year), HMRC identified 58,080 workers with NMW/NLW arrears, with total arrears of £10.3m or average arrears of £177 per worker. The number of workers covered and total arrears more than doubled from 2014/15 to 2015/16. This is no mean feat!

In April 2016 the potential **civil penalty** for non-payment of the NMW/NLW was doubled from 100 per cent to 200 per cent of the arrears, up to a maximum of £20,000 per worker. Further, anyone found guilty of a criminal offence would be considered for disqualification from being a company director for up to 15 years. These are welcome developments. But it is important that wage arrears and penalties are, in fact, paid. The majority of workers receive arrears but this is not possible if the employer goes bankrupt.

Next is the **naming scheme**, whereby BEIS will name all employers who owe their workers over £100 and are not exempted. The latest list of named employers found by HMRC to have underpaid the NMW/NLW was published in February 2017. These 359 companies owed workers almost £1m in arrears in sectors including hairdressing, social care, hospitality and security. HMRC also issued penalties worth around £800,000. This brought the total number of companies named under the scheme since October 2013 to over 1,000 with total arrears of over £4m and total penalties of around £2m.

The top end of the enforcement spectrum is **criminal investigation**. The LPC states:

“We have always seen this as an under-used tool, which could potentially have a high impact on those considering deliberately flouting the law” (LPC 2016a).

The number of prosecutions is low; as of January 2017 there had been just 13 prosecutions since 1999. There may well be good reasons for the low number of prosecutions. They are expensive and do not always secure arrears for the workers. The CPS has demanding criteria before they will take a case forward. Much non-compliance is inadvertent. Also, it is plausible that the new labour market Undertakings and Orders offence, supported by a criminal offence for non-compliance, will result in more prosecutions. This carries a maximum custodial sentence of two years.

In consulting stakeholders about the full strategy I will need views and evidence concerning the balance among the four levers e.g.:

- is the focus on pay arrears a sufficient deterrent to non-compliance?
- are the civil penalties working as planned?
- is naming non-compliant firms a sufficient deterrent? If not, what more can be done?
- is there a case for more prosecutions? Potentially this may be a stronger deterrent to non-compliance.

Balance between enforcing the National Living Wage and promoting joint work

The three main bodies already undertake much joint work among themselves and with other stakeholders such as Local Authorities, police, Home Office colleagues etc. This work includes shared intelligence and joint operations. There is a push for more such joint or “joined up” activity. The Director’s post was established, in part, to promote such activity via the intelligence hub.

The government response to the ‘Tackling exploitation in the Labour Market’ consultation stated:

“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.”

Such joint work is vital for the future. But HMRC faces a formidable challenge enforcing the NLW. Coverage of the labour force will rise from 5 per cent in 2015 to 14 per cent in 2020. The LPC suggest sectors at risk include social care, small retail, small firms, textiles, agriculture, security and call centres (LPC 2016a).

The LPC also point out the NLW also introduces other challenges. These include:

- complexity: increasing the number of rates from 4 to 5
- timing: the NLW changes in April, not October like the NMW previously
- the name: some employers may misunderstand the NLW and think it voluntary, like the non-statutory United Kingdom and London Living Wage.

I will discuss with HMRC and other interested parties the balance between extra joint work and properly enforcing the NLW.

Reconcile different measures of non-compliance

The NAO (2016) state:

“There is currently no accurate estimate of employers’ non-compliance with minimum wage regulations and obtaining such an estimate has been problematic..... as a result it has been difficult to assess the effectiveness of HMRC enforcement activities over time” (para 2.3 and 7).

As we highlighted in the previous chapter, the 2016 ASHE suggests around 360,000 workers aged 16 and over were paid less than the NMW/NLW. This constituted 1.3 per cent of United Kingdom employee jobs (or 19 per cent of those paid at or below the rates). The proportion has been largely unchanged since 2011 (ONS 2016).

The LPC (2016a) after adjusting for the accommodation offset and various apprentice regulations state that:

“in total then, non-compliance measured on ASHE could affect somewhere around 100,000 people, plus an unknown number in the informal sector”.

The LPC go on to state (2016a):

“We urge the Government to ensure that the new Director of labour market enforcement has an explicit goal of reconciling different estimates of NMW non-compliance, including obtaining clearer reporting of the scale of non-compliance found in HMRC activity”.

The NMW has operated since 1999. Therefore the LPC, HMRC, ONS and other interested parties have had nearly two decades to undertake such reconciliation. Nevertheless, it is an important task. Once the Intelligence Hub is up and running it should be possible to gather better evidence on the informal sector and identify victims of non-compliance by, for example, personal characteristics and sector.

4.3.2 GLAA

Decisions on two major issues will be required in 2017. First, for Ministers, should licensing labour providers be extended to other sectors or, alternatively, tightened or simplified in existing sectors? Second, what use will the GLAA make of its new police-type powers? These are considered in turn.

Licensing

Greater flexibility is now permitted under the 2016 Immigration Act. The licensing regime can now be flexed to meet the changing nature of the threat of non-compliance. I am able to recommend to Ministers future changes to the GLAA's licensing regime, including extending the sectors to be licenced.

One key question here is what we expect licensing to achieve. Is compliance with minimum standards sufficient? Or should we expect licensing to drive up standards? Although some say that without licensing there is a “race to the bottom” other commentators suggest that licensing may encourage mediocrity – once a licence is gained there is little incentive to do better.

Presently there are around 1000 labour providers licensed by the GLAA. Around 300 have been licenced from the start of the licensing regime in 2004. It will be important to learn from the GLAA their view on the impact of licensing on the behaviour of these organisations.

The British Retail Consortium has noted that *“labour exploitation occurs in more sectors than those currently covered by the GLAA”*. There have been calls to extend licensing to, for example, labour providers in parts of the construction sector and social care. This

would be a major step. Those in favour of such reforms highlight GLAA's successes in the sectors they currently cover:

"This model should be replicated across the board to ensure that compliant businesses are not undercut by those who profit from underpayment of workers and other breaches of law." (FLEX, stakeholder survey 2016)

UNISON has said:

"[We] believe there is a strong case for extending the GLA's remit so that new sectors such as social care, construction and hospitality come within the licensing scheme. There are high proportions of workers in these sectors who are vulnerable to exploitation because of their employment or migrant worker status and there is evidence of exploitative working practices being routinely used."

Other bodies oppose such a change to the current licensing regime:

"The CBI does not support an extension of licensing to other sectors without evidence that licensing is appropriate and proportionate for the problem to be addressed."

The Recruitment and Employment Confederation have stated that:

"An extension of licensing is the best way to add unnecessary cost and bureaucracy to compliant UK businesses"

Instead their preference would be to focus on improving current labour market enforcement.

Many occupations require licensing, for example doctors and security personnel. In the USA one worker in five is in an occupation requiring a licence and *"dentists, doctors, lawyers, fortune tellers and frog farmers are now licenced in either all or some states"* (Kleiner 2006). There is an ongoing debate on the merits of occupational licensing. It benefits the practitioners but does it also benefit consumers?

Weaker alternatives to licensing are certification or registration. Certification grants "title protection" to persons meeting predetermined standards. Those without certification may perform the duties of the occupation but may not use the title i.e. they cannot describe themselves as certified. Registration is an even weaker form of regulation. It usually requires individuals to file their names, addresses and qualifications with a government agency before practicing the occupation. There is currently no obligation for employment agencies or employment businesses to register with EAS due to the sheer volume of employment agencies/employment businesses (estimated 18,000 agencies/employment businesses). Maintenance of such a list would be resource-intensive and would not preclude poor or non-compliant behaviour. Also, being compliant at the point of registration does not always guarantee continued compliance unless there is a huge enforcement regime sitting behind which, for EAS, would be neither practicable nor desirable. EAS did previously regulate via a licensing mechanism, which was latterly removed from legislation because it was deemed to be an ineffective mechanism to drive compliance and identify those businesses that were non-compliant. Licensing was replaced by the regulatory framework that EAS use now. Licensing labour providers is not the same as licensing occupations. But the Director's office will consult with stakeholders on the

advantages and disadvantages of different forms of regulation along the spectrum: licensing-certification-registration-nothing. Trade unions have a particular interest in licensing and other forms of labour regulation.

In the stakeholder survey UCATT (merged with Unite January 2017) stated that:

“The lack of licensing in industries like construction means that rogues remain able to enter the industry and due to its transient nature, then disappear.....licensing needs to be across all vulnerable sectors”

They, like other stakeholders, want to stamp out modern slavery and non-compliance. But, over and above such important concerns, there is a desire that collective agreements and the National Living Wage are not undermined.

Decisions on licensing are for Ministers. My assessment will be provided to inform Ministers' thinking on this issue.

Use of New Powers

As the remit and investigatory powers of the GLAA has been extended, the new role of Labour Abuse Prevention Officers (LAPOs) was created specifically to tackle serious labour market abuse offences.

In order to effectively tackle such cases, the LAPOs are provided with Police and Criminal Evidence Act (PACE) powers. These police-style powers allow them to: investigate modern slavery where it relates to labour abuse and other labour market offences; arrest suspects; to enter premises where they have a reasonable belief that labour market offences are being committed; to search and seize evidence of breaches of labour market regulations.

The LAPOs are expected on the more serious cases where multiple labour market offences have been committed. LAPOs are, therefore, not confined solely to the GLAA licensed sector but have the powers to investigate offences wherever they occur in the economy.

It is intended that LAPOs will be in place as part of the GLAA around spring 2017. The GLAA budget for 2017-2018 has been allocated an additional £2 million to fund the appointment of the new LAPOs, a few of which are already in post. These new officers, as well as all officers functioning as part of the enforcement bodies, will be expected to make full use of the LME Undertakings and Orders where appropriate.

4.3.4 Modern Slavery

The Immigration Act 2016 also defines as non-compliance certain offences under the Modern Slavery Act 2015 relating to the maltreatment of workers. Such offences are enforced by the police and NCA. I shall consult the relevant police/NCA officials, NGOs and the Anti-Slavery Commissioner in developing this component of the spring strategy.

4.4 Consultation

To inform our understanding of the issues identified above, I intend to launch a consultation in summer 2017. I would like to involve and hear from as many stakeholders

as possible. The information and evidence we receive will be vital to developing my first full strategy in spring 2018.

I shall be writing directly to key stakeholders and publicising further details of the consultation through a variety of media, including through our own web site. As part of this I shall be very keen to undertake visits and meetings across the UK to learn at first-hand how we might best tackle some of the labour market enforcement challenges we are currently facing.

Annex A

Key Statistics: Further Details

Contents

A.1 Apprenticeship Pay Survey72

Table 7: Apprenticeship Pay Survey compliance by age and year of apprenticeship, 2014 - 2016

Table 8: Apprenticeship Pay Survey compliance by framework, 2014 and 2016

A.2 Enforcement Activity.....74

A.2.1 NMW/NLW investigations.....74

Table 9: NMW investigations - arrears and workers by underpayment amount

A.2.2 GLAA Allegations.....75

Table 10: Proportion of 'Allegations' of Breaches of Licensing Standards by Type 2014/15-2015/16

A.2.3 Sectors.....76

Table 11: Mapping of Sectors across Enforcement Bodies

Figure 8: HMRC NMW/NLW Number of cases where arrears have been identified by Industry Sector, 2014/15 - 2015/2016

Table 12: NMW/NLW investigations by Trade Sector, 2014/15 to 2015/16

Figure 9: EAS Number of Breaches of Regulations by Sector, 2014/15 - 2015/2016

Figure 10: EAS Severity of breach by Sector – 2015/16

A.1 Apprenticeship Pay Survey

Compliance with the National Minimum Wage for apprentices is estimated in the Apprenticeship Pay Survey by calculating the basic pay at the standard hourly rate, the provision of accommodation (and/or any associated charges) and unpaid overtime hours. The survey covers around 10,000 apprentices across Great Britain so has a higher proportionate sample than ASHE. But as the survey is self-reported by apprentices there is a chance of error as apprentices may not know their hourly rate or how many hours they work. Evidence from other pay surveys suggests respondents are likely to overestimate hours, underestimate earnings and round numbers, rather than give accurate amounts. Previous research (Understanding Apprentice Pay, 2016) has indicated that it is likely to be an upper bound of non-compliance.

Overall data suggests that underpayment of apprentices has increased for younger apprentices, Level 2 and those in their 2nd year and over the age of 25 (+8pp). This could be due to the introduction of the NLW. Those aged 19-20 and 21-24 in their second or later year of their apprenticeship were the most likely to be underpaid, with 32 per cent paid less than the NMW. Table 8 shows that hairdressing has the highest rate of underpayment at almost 50 per cent. Larger than average increases in the rate of underpayment were seen in electro technical, hospitality and catering and health, social care and sport.

Table 7: Apprenticeship Pay Survey compliance by age and year of apprenticeship, 2014 and 2016

Age	Non-compliance rate in 2014	Non-compliance rate in 2016	Change in non-compliance rate (percentage point)
Age 16-18:	24%	29%	5 p.p.
Age 19-20:	14%	18%	4 p.p.
Age 21-24:	8%	9%	1 p.p.
Age 25 and above	1%	2%	1 p.p.
All apprentices	15%	18%	3 p.p.

Source: Low Pay Commission (2016b)

Table 8: Apprenticeship Pay Survey compliance by framework, 2014 and 2016

Framework	Non-compliance rate in 2014	Non-compliance rate in 2016	Change in non-compliance rate (percentage point)
Hairdressing	45%	48%	2 p.p.
Children's Learning and Development	28%	28%	0 p.p.
Construction and Related	22%	25%	3 p.p.
Electro technical	18%	24%	7 p.p.
Health, Social Care and Sport	12%	17%	5 p.p.
Engineering, Manufacturing Technologies	16%	17%	1 p.p.
Business and related	14%	16%	3 p.p.
Hospitality and Catering	10%	15%	5 p.p.
Retail	12%	15%	2 p.p.
Customer Service	11%	12%	1 p.p.
Accounting	9%	8%	-1 p.p.
Management	4%	8%	3 p.p.
Care Leadership and Management	5%	5%	0 p.p.
All apprentices	15%	18%	3 p.p.

Source: Low Pay Commission (2016b)

A.2 Enforcement Activity

A.2.1 NMW/NLW Investigations

The table below gives the detail figures on HMRC NMW/NLW investigations and outcomes.

Table 9: NMW/NLW investigations - arrears and workers by underpayment amount (2015/16)

Arrears	No of cases	No of Workers	% of cases	Total Amount of Arrears	Average Arrears per Worker
£1 - £100	152	206	15.9%	£7,400	£36
£101 - £500	251	619	26.2%	£67,100	£108
£501 - £1000	137	477	14.3%	£100,700	£211
£1,001 - £5000	279	3,789	29.1%	£631,600	£167
£5,001 - £10,000	69	777	7.2%	£511,500	£658
£10,001 - £20,000	35	3,536	3.7%	£507,100	£143
£20,001 - £50,000	21	3,648	2.2%	£696,200	£191
£50,001 - £100,000	6	8,234	0.6%	£478,000	£58
£100,000+	8	36,794	0.8%	£7,281,800	£198
Total	958	58,080	100%	£10,281,400	£177

Source: BEIS/HMRC enforcement data

Notes: A qualifying worker who is paid less than the minimum wage for any pay reference period is legally entitled to be paid arrears by his employer. Arrears are the difference between the remuneration received by the worker and the current rate of minimum wage

A.2.2 GLAA Allegations

The table below gives details on the types of allegation received by GLAA around breaching of licensing standards. Operating without a licence and withholding wages are the most common allegations. There are allegations across the spectrum.

Table 10: Proportion of 'Allegations' of Breaches of Licensing Standards by Type 2014/15-2015/16

Allegations - Licence Standard Breaches	Proportion of Allegations (2014/15)	Proportion of Allegations (2015/16)
No GLA Licence	22%	21%
Withholding Wages	11%	8%
Paying Wages	10%	8%
Fees and Providing Additional Services	5%	7%
Physical and Mental Mistreatment	5%	7%
Fit and Proper	7%	5%
PAYE NI and VAT	6%	5%
Restricting Worker Movement Debt Bondage and Retaining ID Documents	2%	3%
Sub-Contracting and Using Other Labour Providers	6%	3%
Contractual Arrangements and Records	1%	3%
Quality of Accommodation	0%	3%
Slavery, Servitude and forced labour	0%	3%
Human Trafficking	0%	2%
Benefits	1%	2%
Disciplinary and Grievance Procedures	1%	2%
Payslips	2%	2%
Safety at Work	2%	2%
Discrimination	1%	2%
Rest Periods, Breaks and Annual Leave	4%	2%
Transport	2%	2%
Instruction and Training	1%	1%
Offence to facilitate MS /HT	0%	1%
Working Hours	2%	1%
Assigning Responsibility and Assessing Risk	0%	1%
Changing Details	3%	1%
Right to Work	1%	1%
Licensing of Accommodation	1%	1%
Correcting Additional Licence Conditions	1%	0%
Confidentiality	0%	0%
Labour User - Agreements and Records	0%	0%
Provided with Travel or Required to Work away from Home	2%	0%
Total	100%	100%

Source: GLAA enforcement data (2015/16)

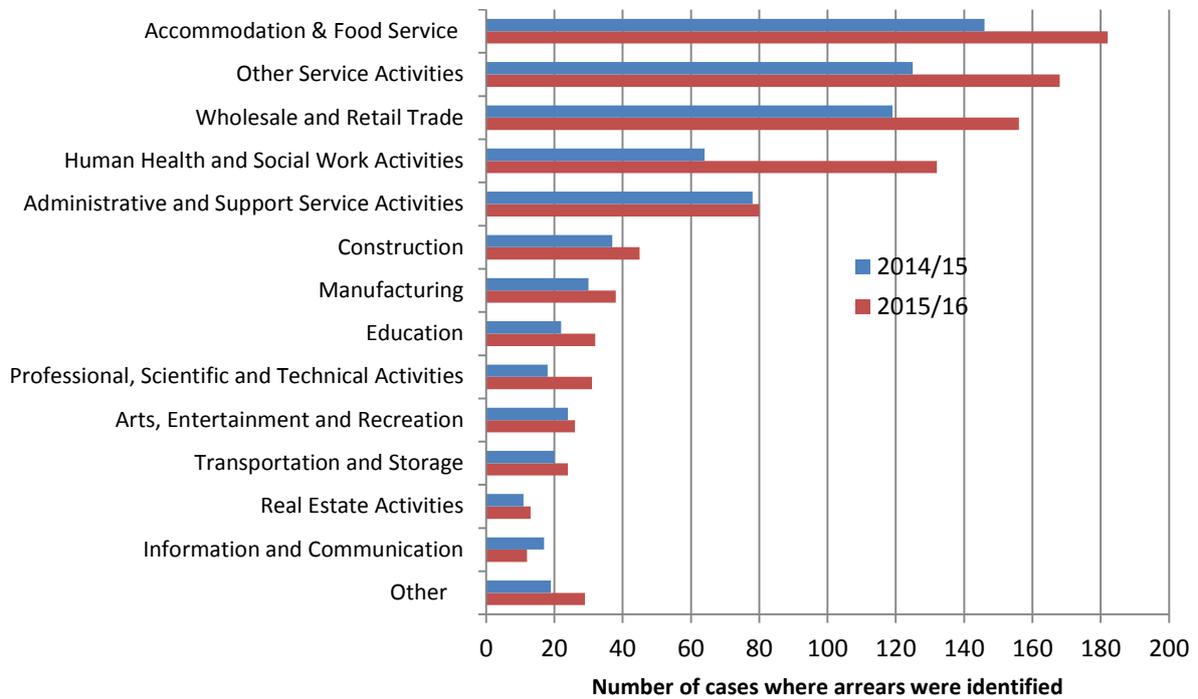
A.2.3 Sectors

The volumes of cases and breaches reported for high level industry sectors vary each year for each body - depending on complaints, intelligence and priorities. The table below shows how the sectors map across the enforcement bodies.

Table 11: Mapping of Sectors across Enforcement Bodies

EAS Agency type	HMRC Industry sectors	GLA sectors
Entertainment/Models	Arts, Entertainment and Recreation	
Industrial	Manufacturing	Dairy, Fish processing, food processing, poultry and eggs
Healthcare	Human Health and Social Work Activities	
Drivers	Transportation and Storage	
Teachers/tutors	Education	
Construction	Construction	
IT/Online	Information and Communication	
Professional/Executive	Professional, Scientific and Technical Activities	
Domestic workers/ Secretarial/Commercial/Admin	Administrative and Support Service Activities	Food packaging, horticulture
Hotel/Catering/Hospitality	Accommodation & Food Service	
	Agriculture, Forestry and Fishing	Agriculture, shellfish gathering

Figure 8: NMW/NLW Number of cases where arrears have been identified by Industry Sector, 2014/15 - 2015/2016



Source: Enforcement bodies data

Note: 'Other' includes seven trade sectors including 'Agriculture, Forestry and Fishing', 'Electricity, Gas, Steam and Air Conditioning Supply', 'Mining and Quarrying', 'Public Administration and Defence, and 'Water Supply; Sewerage, Waste Management and Remediation Activities'.

Table 12: NMW/NLW investigations by Trade Sector, 2014/15 to 2015/16

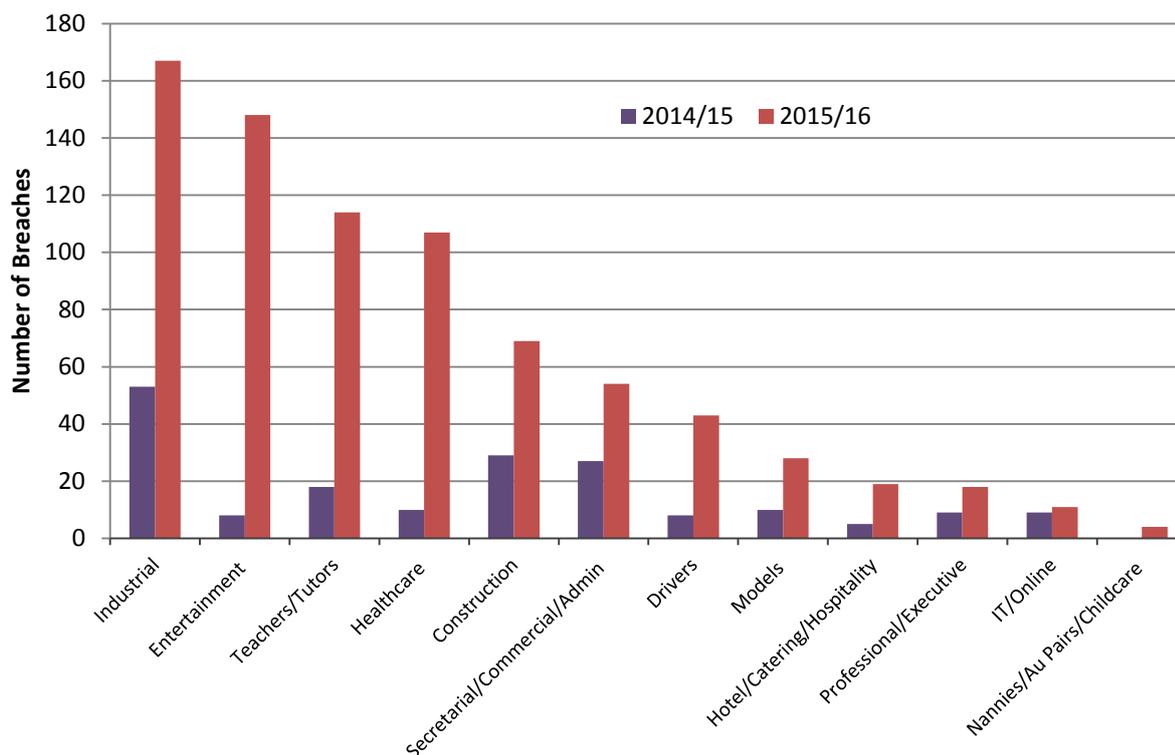
Trade Sector	2014/15					2015/16			
	Estimated jobs at or below NMW ¹	Closed cases	Strike-rate	Workers identified	Arrears identified (£)	Closed cases	Strike-rate	Workers identified	Arrears identified (£)
Accommodation and Food Services	354,000	528	28%	4,099	385,300	819	22%	4,219	1,419,700
Administrative and Support	226,000	231	34%	3,421	273,200	232	34%	16,071	4,747,800
Arts, Entertainment and Recreation	43,000	59	41%	448	183,400	58	45%	4,783	597,800
Construction	31,000	109	34%	121	110,700	90	50%	90	127,300
Education	48,000	59	37%	336	132,100	57	56%	214	237,100
Financial and Insurance Activities	5,000	33	30%	84	21,300	12	58%	17	19,200
Human Health and Social Work	133,000	186	34%	12,157	904,400	276	48%	2,562	750,700
Information and Communication	15,000	51	33%	38	49,200	39	31%	292	19,900
Manufacturing	81,000	88	34%	361	217,100	168	23%	113	77,500
Other Service Activities	56,000	285	44%	367	376,400	293	57%	959	327,800
Professional, Scientific and Technical	43,000	70	26%	36	37,200	69	45%	4,218	162,700
Real Estate Activities	8,000	31	35%	125	72,600	24	54%	31	56,800
Transportation and Storage	22,000	73	27%	98	79,700	91	26%	42	22,200
Wholesale and Retail Trade	345,000	357	33%	4,568	395,700	402	39%	23,985	1,665,100
Other	20,000	44	32%	59	53,000	37	32%	484	49,600
Total	1,429,000	2,204	33%	26,318	3,291,500	2,667	36%	58,080	10,281,400

Source: BEIS (2016a)

Notes: The estimated number of employee jobs paid below NMW is based on ASHE 2015 and uses those paid within 5 pence of the NMW rates. A trade sector to Standard Industry Classification code lookup is available here - www.hmrc.gov.uk/gds/vsme/attachments/trade_classes.doc

1. 'Other' includes seven trade sectors including 'Agriculture, Forestry and Fishing', 'Electricity, Gas, Steam and Air Conditioning Supply', 'Mining and Quarrying', 'Public Administration and Defence, and 'Water Supply; Sewerage, Waste Management and Remediation Activities'.
2. Arrears - A qualifying worker who is paid less than the minimum wage for any pay reference period is legally entitled to be paid arrears by his employer. Arrears are the difference between the remuneration received by the worker and the current rate of minimum wage
3. Strike rate - is the proportion of closed cases where arrears were identified.

Figure 9: EAS Number of Breaches of Regulations by Sector, 2014/15 - 2015/2016



Source: Enforcement bodies enforcement data (2016)

Table 13: EAS Severity of Breach – 2015/16

Severity of Breach	Regulations	Proportion of Breaches (2015/16)
Green	Transfer fees to hirers; client accounts for entertainment and model agencies	11%
Amber	Detriment to work-seekers working elsewhere; terms to work-seekers; terms to hirers; confirming job details with a hirer; information about work to hirers and work-seekers; record keeping; limited company work-seekers and “opt-outs”.	59%
Red	Additional fee paying services provided by employment agencies and employment businesses; non-payment of wages to a temporary worker; confirming work-seeker details; additional checks where work-seekers are supplied to work with or care for vulnerable persons; fees charged to work-seekers in the entertainment and model sectors; disclosure of information (confidentiality); obstruction of EAS enforcement powers.	30%

Source: EAS enforcement data

Annex B

Stakeholder Roundtable Attendees – 24/25 January 2017

National Farmers Union (NFU)
Focus on Labour Exploitation (FLEX)
Recruitment and Employment Confederation (REC)
The Association of Professional Staffing Companies (APSCo)
The Employment Agent's Movement (TEAM)
Association Recruitment Consultancies (ARC)
The Freelancer & Contractor Services Association (FCSA)
Resolution Foundation (RF)
Centre for Social Justice (CSJ)
UNISON
UNITE
Association of Labour Providers (ALP)
Confederation of Business Industry (CBI)
Food and Drink Federation (FDF)
British Retail Consortium (BRC)
Joseph Rowntree Foundation (JRF)
Federation of Small Businesses (FSB)
Trades Union Congress (TUC)
PRISM/ Professional Passport
British Cleaning Council
Institute of Directors (IoD)
Citizen's Advice (CA)
Low Incomes Tax Reform Group (LITRG)

References

BEIS (2011). *Research into employers' attitudes and behaviour towards non-compliance with UK National Minimum Wage (NMW) legislation*. October 2011. Available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/32180/11-1335-research-employers-attitude-national-minimum-wage.pdf

BEIS (2016a). *Final government evidence to the Low Pay Commission Autumn 2016 Report*. October 2016.

Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/561779/beis-16-37-national-minimum-wage-government-evidence-for-lpc-autumn-2016-report.pdf

BEIS (2016b). *Business population estimates for the UK and Regions*. October 2016. Available at :

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/559219/bpe_2016_statistical_release.pdf

BEIS/Home Office (2016a). *Tackling Exploitation in the Labour Market – government response*. January 2016. Available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/491260/BIS-16-11-government-response-to-tackling-exploitation-in-the-labour-market.pdf

BEIS/Home Office (2016b) *Code of Practice on labour market Enforcement Undertakings and Orders*

November 2016. Available at: <https://www.gov.uk/government/publications/labour-market-enforcement-undertakings-and-orders-code-of-practice>

CAB (2015). *Neither one thing nor the other: how reducing bogus self-employment could benefit workers, business and the Exchequer*. 2015. Available at:

<https://www.citizensadvice.org.uk/Global/CitizensAdvice/Work%20Publications/Neither%20one%20thing%20nor%20the%20other.pdf>

Understanding apprentice pay (2016) *Understanding apprentice pay interim report*. University of the West of England Research. 2016. Available at

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/520388/Drew_Ritchie_Veliziotis_Interim_Research_Report_February_2016.pdf

HMT and HMRC (2015). *2010 to 2015 government policy: tax evasion and avoidance*. Updated May 2015.

Available at: <https://www.gov.uk/government/publications/2010-to-2015-government-policy-tax-evasion-and-avoidance/2010-to-2015-government-policy-tax-evasion-and-avoidance#appendix-3-minimising-the-hidden-economy> (copy and paste link into browser)

Home Office (2016). *Immigration Act 2016 Factsheet – Labour market enforcement (Sections 1-33)*. July 2016. Available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/537203/Immigration_Act_Part_1_-_Labour_Market_Enforcement.pdf

Institute of Economic Affairs (IEA) (2013). *The shadow Economy*. March 2013. Available at:

<http://iea.org.uk/sites/default/files/publications/files/IEA%20Shadow%20Economy%20web%20rev%207.6.13.pdf>

Ipsos MORI (2012). *Non-compliance with the National Minimum Wage Research report prepared for the LPC*. February 2012. Available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/226987/Non-compliance_with_the_national_minimum_wage.pdf

JRF (2014). *Forced labour in the United Kingdom*. June 2014. Available at:

<http://www.gla.gov.uk/media/1584/jrf-forced-labour-in-the-uk.pdf>

Kleiner (2006). *Licensing Occupations: Ensuring Quality or Restricting Competition?* Upjohn Institute.

Available at: http://research.upjohn.org/up_press/18/

Low Pay Commission LPC (2016a). *National Minimum Wage Report Spring 2016*. March 2016. Available at: <https://www.gov.uk/government/publications/national-minimum-wage-low-pay-commission-report-spring-2016>

Low Pay Commission LPC (2016b). *National Minimum Wage Report Autumn 2016*. October 2016. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/575634/10583-LPC-National_Living_Wage_WEB.pdf

MAC (2014). *The growth of EU and non-EU labour in low-skilled jobs and its impact on the UK: Migrants in low-skilled work*. July 2014. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/333084/MAC-Migrants_in_low-skilled_work_Summary_2014.pdf

Ministry of Justice (2016). *Tribunals and gender recognition certificate statistics quarterly: July to September 2016*. December 2016. Available at: <https://www.gov.uk/government/statistics/tribunals-and-gender-recognition-certificate-statistics-quarterly-july-to-september-2016>

National Audit Office (2008). *Comparing how some tax authorities tackle the hidden economy*. April 2008. Available at: https://www.nao.org.uk/wp-content/uploads/2008/04/0708341_comparing.pdf

NAO (2016). *Ensuring employers comply with National Minimum Wage regulations*. May 2016. Available at: <https://www.nao.org.uk/report/ensuring-employers-comply-with-national-minimum-wage-regulations/>

Office for National Statistics (2016). *Low pay in the UK*. April 2016. Available at: <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/bulletins/lowpay/apr2016>

Office for National Statistics (2017). *UK labour market: Feb 2017*. Available at: <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/bulletins/uklabourmarket/feb2017>

Schneider (2015). *Size and Development of the Shadow Economy of 31 European and 5 other OECD Countries from 2003 to 2015: Different Developments*. January 2015. Available at: <http://www.econ.jku.at/members/Schneider/files/publications/2015/ShadEcEurope31.pdf>

TUC (2016). *Tackling Exploitation in the Labour Market – TUC response to BIS/Home Office consultation*. January 2016. Available at: <https://www.tuc.org.uk/sites/default/files/EC3-5-Attachment-Tackling%20Labour%20Market%20Exploitation.pdf>

UCATT, Manchester Business School/Community Links (2011). *The Hidden workforce building Britain: Exposing exploitation and protecting vulnerable workers in construction*. September 2011. Available at: <http://www.community-links.org/linksuk/wp-content/PDF/UCATT.pdf>

Warren, R. et al (2016). *IFF Evaluation of pay and work rights calls to the Acas Helpline*. September 2016. Available at http://www.acas.org.uk/media/pdf/p/3/Helpline_PWR_calls_evaluation_Final_Report.pdf

