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**Labour Market Enforcement: 2017/2018 strategy**

Dear stakeholder and partners,

I am writing to give you an early overview of the themes about which I will be consulting with you to inform the first annual labour market enforcement strategy.

Since I was appointed as Director of Labour Market Enforcement in January 2017, I have been meeting with stakeholders and, in March, submitted an interim strategy for agreement by both the Home and Business Secretaries. The general election has inevitably delayed the publication of this report, but we expect it to be laid in parliament and published soon. This has also delayed the publication of my consultation that would inform the full annual strategy, now expected in Spring 2018.

I hope therefore to be able to launch the official consultation later in the summer. In the meantime, in order to inform ongoing discussions and to help organisations prepare for the consultation, I wish to set out the broad areas around which I will be asking for evidence and views from stakeholders. I do so in this letter.

I will be seeking evidence to inform the strategy via two channels:

- First, I would appreciate written feedback on these questions and any relevant evidence that you may wish to bring to our attention.
- Second, I greatly value the opportunity to meet with and hear from stakeholders directly. In my previous roles, I have found that hearing about issues at first hand from stakeholders in this way has proven to be invaluable in gathering evidence. I am keen to meet as many stakeholders as possible at any time (i.e. not just during consultation periods) from across the United Kingdom. These meetings can either be multi-stakeholder roundtable discussions (e.g. sector-focused) or bilateral with organisations individually. Also if you wish to host a group discussion with relevant partners, this would be also welcomed.

## Background

The role of Director of Labour Market Enforcement was created under the Immigration Act 2016 (the Act), jointly sponsored by Home Office (HO) and Department for Business, Energy and Industrial Strategy (BEIS), to bring better focus and co-ordination to the enforcement of labour market legislation. The Director has overarching responsibility for setting the strategic direction of the three labour market enforcement bodies – HMRC National Minimum Wage/National Living Wage (NMW/NLW), Gangmasters and Labour Abuse Authority (GLAA), Employment Agency Standards Inspectorate (EAS).

The Act states that the Director has a number of responsibilities namely:

- setting the strategic direction of the enforcement bodies with an annual strategy;
- publishing an annual report assessing the success of action in meeting the objectives and priorities in the previous year's plan; and
- developing an Intelligence Hub, with information drawn from the enforcement bodies and beyond, to provide a single view of risk and priorities across the spectrum of non-compliance – from accidental payroll errors to serious criminality.

## Context

Overall, our flexible labour market has provided many advantages for the UK economy and, on the whole, I recognise employers comply with employment regulations and the law. However, there remain some problem areas where minimum standards in the labour market are not fully applied or enforced. The challenge of enforcing the relevant regulations and laws has become more complex due to the major labour market changes in last 30 years, notably:

- **The fissuring of employment relationships:** the relationships between worker and employer have become increasingly complex as employers have contracted out, outsourced, sub-contracted and devolved many functions that were once done in-house.
- **The decline in union membership:** unionisation in the private sector is in single figures outside ex-public industries, and the coverage of collective bargaining is only around one third of late 1970s figure.
- **Changing composition:** the increase in part-time working, self-employment and the gig economy have been particularly significant in the last decade, along with a hollowing out of the labour market with fewer

middle skill jobs, and the expansion of low and high skill jobs. The distinction between employees, workers and self-employed people is being increasingly blurred, impacting on clarity around rights and enforcement of these. The Matthew Taylor Review will consider the issues around employment status in fuller detail.

As you will already be aware, there are two principal routes to enforce employment rights. One route is via employment tribunals where the enforcement of employment rights can be pursued on an individual basis, for example, in cases of unfair dismissal, discrimination and redundancy.

The second route – which is my primary focus - involves rights being enforced directly via a number of state bodies including the three which fall under the strategic remit of the Director of LME:

- HMRC: enforce NMW/NLW (on behalf of BEIS)
- Employment Agency Standards Inspectorate (EAS): enforce employment agency law
- Gangmasters and Labour Abuse Authority (GLAA): enforce licensing gangmasters in horticulture, shellfish gathering and food processing, and have recently been given police-type powers across minimum wage, employment agencies, licensing and modern slavery.

Beyond these, other bodies play an important role too. These include the Health and Safety Executive, the Insolvency Service and local authorities, and I would expect the three bodies listed above to be working in partnership with these where appropriate. Extension of GLAA powers means the entire spectrum of non-compliance across the labour market in the UK now falls within my remit from unintentional errors to modern slavery. There are clear links too between the work of the enforcement bodies and that of the Independent Anti-Slavery Commissioner.

### **What is effective enforcement?**

The main aim of the strategy will be to ensure enforcement activity is as effective and efficient as possible and dealing with and preventing non-compliance in the labour market. I believe that to achieve this the activities of the enforcement bodies must be built around the following principles:

- **Prioritisation:** Action from enforcement bodies needs to be informed by an understanding of the probable severity of problem across sectors; both frequency and level of harm.

- **Deterrence effect:** The threat of investigation and enforcement must act as a deterrent to employers to proactively spur change in compliance more widely than only those directly inspected. This relies on both the perceived probability of investigation and the expected level of penalty. Increased labour market enforcement presence should deter rogue employers and encourage a more level playing field for the compliant businesses.
- **Sustainability:** enforcement must have a long term effect on employer behaviours and lead to low rates of recidivism and lasting compliance
- **System-wide impacts:** influencing the behaviour of firms through each layer of their industry, to improve overall compliance including, where necessary, using sector specific levers to achieve this.

### Areas for consultation

There are a number of areas and questions that I have identified where I would very much like your feedback, evidence and views. In the official consultation we will set out a more detailed series of questions but the broad themes are set out in the Annex below. These themes are by no means exhaustive: if there are issues outside of these that you would also like to bring to my attention please do so.

Please note that we may wish to quote evidence received in the published strategy to support its conclusions and recommendations, and will attribute these to the individual or organisation that supplied it, unless we are explicitly asked not to do so. In view of this, please highlight if any of the information you submit is of a sensitive nature or if you wish to remain anonymous.

Once the March 2017 interim strategy has been published, my office will send this document to stakeholders.

To organise a meeting with us, or to submit evidence, please email [directoroffice@lme.gsi.gov.uk](mailto:directoroffice@lme.gsi.gov.uk) or call 0207 215 8865.

I look forward to hearing from you and meeting many of you,

Yours sincerely,



Sir David Metcalf CBE

## Annex – Areas for consultation

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### 1. Development of the Intelligence Hub

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The purpose of the intelligence hub is to bring together information from the various enforcement bodies (including but not limited to HMRC, GLAA and EAS) and other types of information such as academic studies, reports from research organisations, unions, trade bodies, charities etc., analysis of national statistical information, as well as potentially receiving direct reports of non-compliance. The layering of these different sources of information will provide an overview of the labour market and inform the priorities within the strategy. This is currently under development.

- What information is available from your sector or organisation that might usefully be fed into the intelligence hub?

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### 2. Approach to enforcement: Issues common to all the enforcement bodies

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- How can we more effectively promote **awareness of rights and responsibilities** – of both workers and employers – and empower workers to report exploitation?
- Given finite resources, how should the enforcement bodies balance enforcement activity that is **reactive** to individual complaints and that which is **proactive** based on information indicating the likelihood of non-compliance?
- **Effective use of the spectrum of enforcement tools:** the enforcement bodies have a variety of tools they can use, from fines and repayment of wages owed, to public naming of organisations caught being non-compliant, to the new Labour Market Enforcement Orders and Undertakings, potentially leading to up to two year prison sentences.
  - How can the enforcement bodies target these tools most effectively to change the behaviour of employers in the long term and ensure workers get restitution when non-compliance is detected?
  - Are there additional tools that enforcement bodies could use to change employer behaviour?
  - How can the work of enforcement bodies be used to prevent exploitation in the workplace? What levers can be used to support compliant behaviour?
- **Joint working:** how and when can agencies benefit from working together and sharing information, and what other organisations should they be working with nationally and at a local level?

- **Size and distribution of resources:** are the resources provided to the enforcement agencies proportionate to their roles? If these were to be altered, on what type of activities should the agencies focus their resource? Is the enforcement effort and penalty regime adequate?
- **Long supply chains** are clearly an issue in some sectors, for example retail, construction and the garment industry. While the firm at the head of the chain is normally compliant, this is not always the case further down the chain. There are number of options used in other parts of the world or in other contexts that could be used to address this problem:
  - Certification of suppliers could be used to set standards in each sector, enabling lead firms to only sub-contract to organisations that have demonstrated they comply with the rules. If this did not have the desired effect, then a strong regime of licensing could be implemented, supported by monitoring and enforcement.
  - Joint liability could be introduced to ensure that lead firms bear some responsibility for their supply chain (possibly to be waived if they use certified or licensed providers).
  - The purchasing power of public procurement could be used to stronger effect to enforce compliance in the private sector.
  - A limit on the number of layers in the supply chain could be introduced.
  - The goods from non-compliant producers could be embargoed (so called 'hot goods'), creating pressure on the ultimate purchaser to only use reputable contractors and suppliers.

How would each of these work in your sectors? Do you have suggestions as to how else this problem could be tackled? How would we reduce the burden on compliant businesses?

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### 3. Issues specific to each enforcement body

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#### HMRC

- What is an effective balance of use of tools in penalty spectrum: from repayment of wages arrears, to civil penalties, naming offenders, to prosecutions?
- As the proportion of the workforce being covered by the NLW increases, estimated to reach 14% of the labour force by 2020, how will HMRC need to adapt to meet this challenge?
- What employment issues facilitate or are linked to the failure to pay NMW/NLW? For example: the lack of payslips for workers; holiday pay; payment of travel/sleep time in certain sectors. How could these be addressed?

## **GLAA**

- How have and should the GLAA use their extended remit?
- Is there a case for extending licensing into new sectors such as construction, care, or cleaning? What might this look like for different sectors?
- What additional measures could be brought in to sanction industries with relatively high levels of non-compliance?

## **EAS**

- Should EAS remit be extended to cover regulation of umbrella companies and compliance under the Agency Workers Regulations?
- Would an amendment to the Employment Agency Act 1973 requiring employment agencies and employment businesses to provide greater clarity in their contracts on the full amount workers will get paid (to avoid hidden charging) help improve compliance in this area?
- How can EAS evolve to better deal with the emergence of online platforms and apps which provide job finding service, considering their limited resources?