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## **Informing the Labour Market Enforcement Strategy 2018/19 Association of Labour Providers – Written Submission**

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### **Scope of the consultation**

The role of Director of Labour Market Enforcement was created under the Immigration Act 2016, 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 (HMRC NMW), Gangmasters and Labour Abuse Authority (GLAA), Employment Agency Standards Inspectorate (EAS). 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.

The Director has identified a number of areas and questions on which he would appreciate stakeholder feedback, evidence and views and as this is the first full strategy, the Director is keen to get a broad understanding of compliance and enforcement issues across sectors.

### **Introduction**

The Association of Labour Providers (ALP) is a trade association promoting good practice for organisations that supply the workforce to the consumer goods supply chain across the food processing, horticultural and wider manufacturing, industrial, warehousing and distribution sectors. The ALP supports and represents its members and provides a range of services to help labour providers achieve social compliance and ethical good practice.

The ALP has approximately 320 organisations that voluntarily choose to be members of the Association on payment of an annual subscription and commitment to abide by the membership regulations. ALP member organisations supply approximately 70% of the temporary contingent workforce into the food growing and manufacturing supply chain. Many of these workers progress to form the permanent workforce for UK industry. All organisations that supply labour into these sectors are required to be licensed by the Gangmasters and Labour Abuse Authority (GLAA).

Labour providers operate in a very competitive market largely resulting from the downward pressure on costs exerted by the consumer goods supply chain. It follows that margins are thin, although just adequate to allow efficient businesses to continue.

ALP's members predominantly provide unskilled workers and semi-skilled workers. Market pressures mean that unskilled work is either at, or very close to, national minimum wage (NMW). For many years these irregular low-paid jobs have been largely filled by migrant workers, able to earn more than they can in their home country. Depending on region EU workers make up between 70 and 100% of workers supplied by labour providers, the remainder being British nationals and those migrants from non-EU countries that have been given right of residence in the UK.

It should be noted that pay rates and terms of employment for temporary agency workers supplied by labour providers are set not by the labour provider but by the hiring client in accordance with the requirements of the Agency Workers Regulations 2010. As such, pay and benefits of temporary agency workers is a cost passed on to the labour user.

The actual hourly rate charged by a labour provider to the hiring client for the supply of temporary workers is ultimately a commercial agreement. Any agreed rate should take into account the particular costs of supply. Hirers of temporary labour that pay unrealistically low rates are knowingly or recklessly conniving in illegality as these rates can only be achieved either through worker exploitation or tax evasion or both.

ALP, partnered with global scheme manager, NSF International is currently launching Clearview ([www.clearviewassurance.com](http://www.clearviewassurance.com)), a global labour provider certification scheme, mapped to global recruitment and labour standards. ALP is developing [www.ResponsibleRecruitmentToolkit.org](http://www.ResponsibleRecruitmentToolkit.org), the toolkit will launch in full in early 2018, providing practical, interactive guidance for brands, retailers, employers and labour providers across the breadth of responsible recruitment good practice.

The ALP Chief Executive is the founder, and the ALP a lead development partner, with the GLAA and Migrant Help of the "Stronger Together" initiative. The project sponsors are all the main UK supermarkets. Stronger Together was formed in response to the rising number of victims being trafficked into the UK for labour exploitation as identified by the annual National Referral Mechanism statistics released by the Home Office National Crime Agency UK Human Trafficking Centre.

Stronger Together was launched in October 2013 as a business led multi-stakeholder collaborative initiative to equip employers and recruiters with the practical knowledge and resources to tackle modern slavery in their business and supply chains by providing free good practice guidance and tools through [www.stronger2gether.org](http://www.stronger2gether.org). To date over 6000 industry representatives have registered to access the resources for use within their organisations. Around 3000 individuals from 2000 businesses have attended a "[Tackling Modern Slavery in Business](#)" workshop and committed to take the tackling slavery message back to over 790,000 workers.

An impact assessment released in October 2017 found that

- 96% of business respondents said that Stronger Together had increased their knowledge and understanding of modern slavery
- 87% -said that Stronger Together helped them prepare and understand how to manage potential situations of forced labour.
- 72% - said that Stronger Together through engagement with Stronger Together their senior management had made a commitment to tackle modern slavery in their business and supply chain.

The ALP Chief Executive is the founder and programme co-ordinator of Fast Forward, a collaborative initiative with many high street and online retailers and brands to build legal and ethical labour standards compliance in supply chains. Currently it is operational in the UK garment, general merchandise and consumer goods retail supply base.

## I. Development of the intelligence hub

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.

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

The Government has rightly concluded that an effective labour market enforcement strategy must be evidence-based. BEIS/HO sponsors state: "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 "...painting a clear picture of non-compliance and driving an enhanced operational response."

a) Clarity is required on what types of intelligence information should be provided to whom.

There are many departments and bodies that have a regulatory and enforcement role on businesses and which impact upon labour market enforcement. These include amongst others HMRC NMW enforcement, GLAA and EAS but also DWP Benefit Fraud, HSE, HMRC Fraud, Immigration Enforcement, the Insolvency Service and the police. There are also other bodies to whom information can be provided such as Acas, the Citizens Advice Bureau and Crimestoppers.

Clarity is required on what types of information should be passed to which body and the appropriate contact points and methods for these. This guidance should be readily accessible by business on Gov.UK and on a downloadable document. The Director is well placed to coordinate this activity.

b) To provide trust and confidence for information to be passed on by responsible businesses, clarity is required on how intelligence information is handled by regulatory and enforcement bodies, particularly with regards to confidentiality and security.

Responsible businesses may obtain information of assistance to regulatory and enforcement bodies in identifying labour abuses and ensuring workers are protected against exploitation. However, in order to do so, barriers to provision of this information need to be removed and the legitimate concerns of businesses addressed and clarified with regard, but not limited, to:

- Discoverability of such documents and information through Freedom of Information requests by the media and other parties;
- The release of such documents and information as evidence by regulatory and enforcement bodies during prosecutions or other actions;
- The position regarding discoverability of such documents and information to opposing legal teams during prosecutions or other actions;
- The position with regard to regulatory and enforcement bodies calling businesses that provided the information to give evidence in legal prosecution cases;

- Where this information has been obtained from third party auditors and audit bodies, the implications that the provision of such information could have on that auditor or audit body;
  - The potential for defamation or other loss of business claims by a party that believes it has been wronged by the provision of such information.
- c) The ALP notes and agrees that the Intelligence Hub will be used to create a strategic overview, will act as a central point of contact for all relevant intelligence and information on labour market non-compliance, that how other government departments, law enforcement partners, NGO's and others work together and collaborate will be crucial and by the Director's intention to develop a better process for intelligence flows across labour market non-compliance with legal gateways and protocols.
- d) The ALP currently passes information on labour abuses, scams, new models of evasion and exploitation to the appropriate authority. ALP will pass appropriate information to the Intelligence Hub once it has been made clear what information should be provided.

Models evolve and adapt over the years in response to legislation and enforcement activity. Exploitative employers and their advisors know that there is virtually nil likelihood of vulnerable workers pursuing claims through the Employment Tribunal system and so see little risk in adopting models such as:

- The Elective Deduction model (used outside GLAA regulated sector) which contractually classes workers as employed for PAYE and NI purposes but as self-employed for employment law purposes.
- So called Professional Employer Organisations (PEO) now marketing their services to labour providers, including those in the GLAA regulated sector. The PEO model being marketed in the UK offers financial incentives to labour providers. How these financial incentives are funded is not made clear by the PEOs. PEO's operate a practice known as co-employment, whereby the PEO becomes the employer of record for tax purposes, filing paperwork under its own tax identification numbers. The labour provider retains legal responsibilities in an employment context. The terms "co-employment" and "employer of record" do not appear in UK statute.
- Tax evasive Travel & Subsistence models for low paid workers (used within the non GLAA regulated sector) which artificially manipulate taxable pay to enable retention of PAYE and NI by the employment business.
- The Collusive Model (used in direct employment) where workers are paid £3 - £3.50 per hour (illegal workers are usually paid less than £3 per hour) for 40-50 hours work per week. Facilitated by fraudulent accountants, timesheets and payslips show 16 hours worked per week at national minimum wage. Workers use these payslips to obtain working tax credits, child tax credits and housing benefit to supplement their wages. Having been made collusive in benefit fraud the workers feel unable to take any action to address this exploitation for fear of loss of benefits and state retribution.

## **II. Approach to enforcement: issues common to all the enforcement bodies**

**The scale and complexity of enforcing rules and laws around the labour market is increasing. For instance the Low Pay Commission (LPC) estimates that the projected changes in NLW to £9.00 an hour by 2020 would raise coverage from around 5 per cent of the labour force in 2015 to around 14 per cent by 2020, with significant implications for the enforcement task for HMRC NMW/NLW team. The new powers within the Immigration Act**

**also mean an increase in the enforcement remit for GLAA and EAS. Consequently the activities of enforcement bodies must be strategically targeted and prioritised to maximise their impact.**

**2. How can we more effectively promote awareness of rights and responsibilities – of both workers and employers? Should reporting non-compliance (especially of one’s own employer) be made easier?**

Taking account of the State’s Duty to Protect Human Rights within the UK Action Plan on implementing the UN Guiding Principles on Business and Human Rights, there needs to be greater access to remedy for vulnerable workers. The ALP proposes the following:

- a) Workplace Health, Safety and Employment Rights poster - Employers have a current legal duty under the Health and Safety Information for Employees Regulations to display the 2009 approved poster in a prominent position in each workplace or to provide each worker with a copy of the approved leaflet. This poster should have key employment rights added to it; how to access further information and how to report labour abuses up to and including modern slavery should be simplified, made more eye catching, be available in multi-language versions. There should be a civil penalty for not displaying the poster which may be applied by a wide variety of enforcement bodies including those within local authorities such as Environmental Health Officers, Trading Standards Officers etc.
- b) GOV.UK generally does a good job in getting the basics of the NMW across. ALP is pleased to see that its request to improve access to reporting non-payment of NMW to HMRC NMW Enforcement by linking the pay and work rights complaints webpage to from the main GOV.UK NMW webpages. The BEIS guidance Calculating the Minimum Wage should also be accessible from the main GOV.UK NMW webpages.
- c) Renaming of Acas – Acas provides a valuable and needed service but how many migrant or vulnerable workers actually know of its existence or purpose? Its name, an acronym for the Advisory, Conciliation and Arbitration Service is a throwback to the industrial relations regime of the 1970s.

Acas should be renamed and rebranded with a name that is clear to all such as “The Employment Helpline”. This would be a renaming and rebranding exercise and no legal or structural changes should be required. The emphasis should remain on this body providing advice and signposting and resolving matters before they reach Employment Tribunal. Resources may need to be enhanced to cope with the additional reach.

- d) Redirection of Acas calls – Call handling protocols should be introduced for calls to Acas (as renamed) to be redirected as required to the GLAA; the HMRC NMW Enforcement Team; the Modern Slavery Helpline.
- e) Right to natural justice in disputes at work - The Acas Code of Practice on disciplinary and grievance procedures applies to employees but not to workers. To apply the Acas Code of Practice as it is, has the effect of inferring the status of employee onto workers which acts contrary to the status of worker that the business is seeking to maintain. Workers, including agency workers, should have a right to natural justice in disputes at work and specifically:
  - The right to know the allegations against them
  - The right to make their case on these allegations
  - The right to a fair and unbiased hearing
  - The right to appeal

There should be a separate Acas Code of Practice which relates to dealing with disciplinary and grievance matters with workers.

- f) Access to Employment Tribunals - Whilst seeking to limit “scandalous, unreasonable or vexatious” claims, there should be a full review of access to remedy through the UK justice system, particularly for the most vulnerable workers to include the potential for: Free conciliation, mediation and arbitration services; Speedy dispute resolution – perhaps by a ‘fast track’ employment tribunal with increased use of phone and Skype/Facetime meetings
- g) The BEIS NMW Policy Team should offer technical support to the Northern Ireland, Scotland and Wales Agricultural Wages Boards in matters relating to the minimum wage.
- h) Trade associations representing businesses operating in low pay sectors should be able to:
  - Meet formally and regularly (every 6 months) as a group with appropriate individuals within BEIS and HMRC to raise and address policy matters
  - Access and work with NMW Technical Advisors to develop their own sector relevant guidance and to assist with complex and challenging issues.

**3. 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 and intelligence indicating the likelihood of non-compliance?**

- a) Adopting an intelligence based approach - Given finite resources, the enforcement bodies’ strategy should be geared to how they can effect the most positive change and how they can address the most serious harm to the most people. This requires all bodies adopting a proactive intelligence based approach of which individual complaints forms one piece of the information jigsaw. The GLAA already adopts such an approach.
- b) Develop a common strategic framework applicable across the regulatory and enforcement bodies as to how to most effectively use their resources improve compliance and address non-compliance. This to include:
  - i. Supporting responsible businesses to comply with their legal requirements:
    - Address gaps in employment law through an annual Employment Bill. There are dozens of areas in everyday work matters from holiday to sickness to working time to maternity and so on where the law is unclear, conflicting or deficient. An annual Employment Bill addressing these with a comprehensive logical, straightforward Employment Rights Act updated each year which draws together a wide range of existing statute into one place.
    - Provide clarity on compliance. Information should be clearly accessible on GOV.UK which enables workers to understand their rights and employers, particularly small businesses, to understand their responsibilities. For example, calculating holiday pay for agency workers correctly is complex, not correctly laid out in law and not clearly understood by many recruitment companies and most agency workers
    - Working with trade associations to jointly develop guidance and collaborating on the provision of training. This is currently done for example between the ALP and GLAA on the provision of [Labour Provider Charge Rate Guidance](#) and Stronger Together [Tackling Modern Slavery in Business](#) training.
  - ii. All regulatory bodies operating in accordance with the [Regulators Code](#).
  - iii. Ensuring proportionality and effective use of resources
    - Addressing minor and technical errors – Where the indicated non-compliance is assessed as being relatively minor and/or a genuine error or technical mistake

rather than a deliberate and systematic abuse then a range of proportionate responses should be developed and applied. These may include an initial phone call or letter rather than a visit. Written assurance that the matter has been put right and any underpayment remedied. This may require an independent assurance from an accountant or solicitor confirming that this has been implemented.

iv. Regulation by reputation

- A consistent and proportionate approach to “naming and shaming” non-compliant businesses.
- Current NMW name and shame policy is heavy handed and disproportionate and does not accord with the [Regulators Code](#) in that “Regulators should choose proportionate approaches to those they regulate, based on relevant factors including, for example, business size and capacity.” The [NMW offender name and shame list](#) should be for those businesses which deliberately set out to pay workers below the NMW rather than reputable companies who inadvertently fall foul of a technical breach of NMW where guidance is absent or unclear and who remedy this error in a timely manner.

**4. Effective use of the spectrum of enforcement tools: the enforcement bodies have a variety of tools that 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.**

**a. What evidence is there on the effectiveness of different penalties at achieving redress for workers and changing the behaviour of employers?**

**b. How can the enforcement bodies target their different enforcement tools to greatest impact, both addressing non-compliant behaviour and supporting compliant businesses?**

**c. Are there additional tools or powers that enforcement bodies could use to change employer behaviour?**

a) The bulk of enforcement should be achieved through civil powers on the principle that rogue businesses should redress the harm they cause. This should provide powers as detailed in [The Macrory Review of Regulatory Penalties](#) which establish that sanctions should:

- change behaviour;
- ensure that there is no financial benefit from non-compliance;
- be responsive & consider what is appropriate to particular offender and particular regulatory issue;
- be proportionate to nature of offence and harm caused;
- restore the harm caused;
- aim to deter future non-compliance.

The ALP is supportive of this approach for:

- creating a more level playing field through prevention of competitive advantage through worker exploitation
- a proportionate means to change behaviour without requiring recourse to the courts
- achieving reimbursement to exploited workers

On 24 May 2012, the Minister of State for Agriculture and Food issued a [Written Ministerial Statement](#) regarding the GLA announcing plans to “introduce administrative fines and penalties for low-level and technical minor offences, including a measure similar to a Repayment Order to achieve rapid reimbursement to an exploited worker of wages or other payment which has been removed.” This has yet to be implemented.

- b) Non-payment of civil penalties should be able to be set against the personal assets of Directors.
- c) Whilst the vast bulk of enforcement should be achieved through civil powers it is essential for there to be a criminal offence:
  - For the deterrent factor of criminal prosecution for those exploitative employers who will seek to adopt evasive measures to avoid paying such as liquidating and phoenixing their businesses.
  - To enable the Proceeds of Crime Act provisions to apply against the personal assets of exploitative employers.
  - To be considered by the Insolvency Service in their decision making to disqualify individuals from holding the position of director.
- d) A criminal offence involving motivation to exploit a worker or exploiting a worker in connection with such an offence would enable enforcement action to be taken against the architects and “controlling hands” of such exploitation:
  - The advisors and accountants that devise and facilitate the delivery of exploitative models of labour market exploitation and;
  - The “controlling hands” that sit behind purportedly legitimate businesses and bankroll and profit through money laundering from the operations of these businesses. Whilst fronted by directors and managers who claim to run the business the real control is exercised by individuals with no identifiable connection to the business through Companies House or otherwise.

**5. Joint working: how and when can agencies benefit from working together and sharing information, and what other organisations should they be working with, both nationally and at a local level?**

- a) The Director has already identified the need for improved collaborative working protocols, information and legal gateways, saying “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.”
- b) The Director should consider the merits of a future move to a single Labour Market Enforcement Agency. The ALP appreciates that the three enforcement bodies, HMRC NMW Enforcement, EAS and GLAA are constitutionally very different and the creation of a single body will be an extended process.

**6. Size and distribution of resources: Overall, is the enforcement resource adequate? 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?**

Whilst, a more joined up approach should deliver efficiencies, the Government should appropriately fund the enforcement bodies to undertake their designated responsibilities. In reaching funding decisions the Government should be mindful:

- not to impose an unreasonable burden on responsible business
- to take account of reclaimed revenue to HM Treasury
- to enable enforcement bodies to retain a proportion of reclaimed Proceeds of Crime
- to take account of civil penalties reclaimed from exploitative employers
- not to divert these organisations from their core activity of enforcement towards self-funding activities
- to ensure clarity over and compliance with HM Treasury rules on funding.

**7. 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 stronger regime of licensing could be implemented, supported by monitoring and enforcement.**
  - Such models have their place in a proportionately regulated well functioning labour market. Sectors where such a scheme are likely to be appropriate are detailed in question 13.
  - Different models of Certification, Licensing, Registration and Fitness to trade can be researched and developed to ensure fitness for purpose for the relevant sector.
- **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 ALP accepts that financial civil penalties may be appropriate where a business uses a non-certified or unlicensed provider.
  - A similar power exists currently. If HMRC finds non-compliance or fraud in your supply chain and it can be shown that you knew or should've known that transactions you entered in to were connected with fraudulent evasion of VAT, you'll lose the right to recover the tax paid on these transactions. Failure to carry out appropriate checks will be one of the factors that HMRC will take into account in considering whether you knew or should've known of the VAT fraud.
  - The ALP does not support joint liability. Like the above power, joint liability is unlikely to be enforced to any significant extent. Prosecution would be lengthy, complex, often not in the public interest.

- **The purchasing power of public procurement could be used to stronger effect to enforce compliance in the private sector.**
  - Agreed. Public procurement should be a model of due diligence best practice and model a standard to be aspired to by the private sector.
  - The Welsh Government in June 2017 implemented a [Code of practice: Ethical employment in supply chains](#) This code commits public, private and third sector organisations to a set of actions that tackle illegal and unfair employment practices. All organisations that receive funding from Welsh Government, either directly or via grants or contracts, will be expected to sign up to the code. Other organisations in Wales are encouraged to sign up. The effectiveness of this Code of Practice should be reviewed and may be used as the basis for a model for wider public procurement.
- **A limit on the number of layers in the supply chain could be introduced.**

- In German legislation for recruitment companies there must not be more than one supplier between the worker and the end-hirer – a so-called ban on chain leasing.

Whilst such intermediaries do not operate in the sector licensed by the Gangmasters and Labour Abuse Authority due to the enforcement regime, in the UK there are a plethora of intermediaries, umbrella companies, professional employer organisations and managed service providers (MSPs) that interpose themselves in the labour supply relationship between the worker and the employment business in order to deliver tax advantages.

The role of such intermediaries (and artificial constructs which seek to achieve the same effect) and their position in the future world of work and impact on the rights of workers should be a matter for detailed consideration by the Director.

- **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.**
  - ALP does not have a particular view on this other than it appears challenging to enforce.

**How would each of these work in your sectors? Do you have suggestions as to how else this problem could be tackled?**

- There is HMRC [“Use of labour providers: advice on due diligence”](#) guidance. Separate general guidance could be produced for appointment of suppliers.

**8. Sector specific solutions: What additional measures could be brought in to sanction industries with relatively high levels of non-compliance? How would we ensure compliant businesses were not over-burdened?**

As responded to in other questions

### **III. Issues specific to each enforcement body**

#### **HMRC**

**9. What systemic employment issues facilitate or are linked to the failure to pay NMW/NLW? For example: the lack of payslips for workers; non-payment of holiday pay or sick pay; payment of travel/sleep time in certain sectors. How could these be addressed?**

- a) Status of Employment and NMW – Rights extend equally to employees and to workers (as defined by the Employment Rights Act) but not to the self-employed/those in business on their own account. However certain businesses in a wide variety of sectors, often through complex business structures, seek to categorise their workforce as self-employed/working in business on their own account contractually citing an unfettered “right of substitution” to override the statutory requirement “to do or perform personally any work or services for another party to the contract”. In a substantial number of cases this is a contractual sham or in practice does not reflect the reality of the situation.

The fact that interpretation of what constitutes employment status varies for various employment laws, tax law, health & safety law, insurance law, pensions law and so on is unsatisfactory and burdensome. The fact that employment status between employee, worker and self-employment may be defined by cleverly constructed contracts (challengeable only through employment tribunals) means that less scrupulous businesses may gain unfair competitive advantage against those seeking to offer more secure regular employment. The fact that employment status between employee, worker and self-employed must be determined by the employment tribunal on a detailed analysis of the facts means that it is not understood by the ordinary working person or small employers.

The time for a legal redefinition of employment status is long overdue. The objective is to create a clear definition, understandable to the ordinary working person between: Self-employment/being in business on one’s own account; and Employment / dependent work.

Matthew Taylor was asked by the Prime Minister to carry out an independent [Review of Modern Working Practices](#) including employment status. The report is being considered and further consultation being undertaken before the Government responds in full later this year.

- b) Entitlement to and calculation of paid holidays - Holiday pay constitutes a significant expense to business, the statutory minimum adding over 12% to employment costs. Non or underpayment of holiday pay appears to be widespread. The GLAA report non or underpayment of holiday pay as a significant area of non-compliance. Where this non-compliance occurs in the GLAA licensed sector one may reasonably assume that avoidance in unlicensed sectors is rife. The [Give us a break!\\* report](#), based on evidence from Citizens Advice Bureaux across England and Wales, reveals that denial of paid holiday entitlement is widespread, especially among small employers in low-profitability sectors of the economy.

Rights to paid holiday extend equally to employees and workers under the Working Time Regulations but not to the self-employed/those in business on their own account. Methods of calculation vary as dependent on the definition of a week’s pay as defined in the Employment Rights Act 1996.

In the ALP’s experience, workers mostly do not understand their entitlement or their rights.

There are significant areas of complexity in calculating holiday pay and areas where the law is not clear, particularly for agency workers, which has the consequence that employers and labour providers do not understand how to calculate holiday pay correctly and there is often underpayment and incorrect payment.

The law on accrual, calculation, booking and payment of holiday is in serious need of overhaul. There are many areas where the law on holiday needs to be amended. This is particularly so for workers without normal working hours.

There should be collaboration to develop straightforward guidance for employers / employees / workers and agency workers and to make this readily available on GOV.UK.

- c) Enforcement of holiday pay – Labour providers operating in the GLAA regulated sector are subject to:
- Licensing Standard 2.3 – “A licence holder must maintain records to show that a worker receives paid annual leave, sick, maternity, paternity and adoption pay to which they are legally entitled.”

And where holiday pay has been systematically withheld the GLAA has regarded this under:

- Licensing Standard 3.3 – “A licence holder must not withhold or threaten to withhold the whole or part of any payment due to a worker in respect of any work they have done”.

Holiday pay is not enforced in any other sector. It is therefore not an unreasonable proposal to extend the remit of HMRC NMW Enforcement to enforce non or under payment of holiday pay.

- d) Payslips Recommendation - There is benefit in a legal requirement for:

- Hours worked in the pay reference period to be printed on the payslip to enable workers to clearly see that NMW has been paid.
- Hours of holiday accrued / owing to be printed on payslips.

**10. The proportion of the labour force covered by the NLW is predicted to increase to 14 per cent by 2020, inevitably leading to an increase in the number of complaints to HMRC about correct payment of wages. How should HMRC balance responding to individual complaints against proactive, risk-based enforcement?**

This has been addressed in the response to Question 3.

**11. Should the remit of the NMW/NLW team within HMRC be extended to cover other types of non-payment of wages?**

This has been addressed in the response to Question 9.

## **GLAA**

**12. How can the GLAA most effectively use its extended remit and resources to enforce non-compliance?**

- a) Overwhelmingly, GLAA licence holders are in favour of licensing, perceive that the GLAA is doing a good job and believe that it has improved conditions for workers. Labour provider responders to the biennial ALP survey in June 2017 provided strong support for the work of the GLAA with 96% of the 226 that completed the survey stating they are in favour of licensing. Every result showed an improvement compared to the last ALP survey in 2015 (in brackets) as follows:
- Are in favour of gangmasters licensing – 96% (93%)
  - Think the GLAA is doing a good job – 86% (73%)
  - Believe the GLAA has created a more level playing field for competition – 69% (67%)
  - Believe the GLAA has reduced fraud/illegal activity – 80% (79%)
  - Think the GLAA has improved conditions for workers – 88% (79%)
  - Agree that the service from the GLAA is professional – 84% (77%)

- b) The ALP and its members have more experience of labour market enforcement than any other business sector in the UK. The experience of these organisations is that intelligence led, proportionate enforcement improves the competitive playing field for business, reducing exchequer fraud and offers protection for vulnerable workers.
- c) The results above demonstrate widespread support for the strategy and work of the GLAA. Focus is being applied through intelligence to the most at risk workers in our society.
  - Ongoing compliance activity within the licensed sector not to be reduced to such a level that
  - Establishment of impact and outcomes based key performance indicators which identify

**13. Is there a case for extending licensing into new sectors such as construction, care, or cleaning? What might this look like for different sectors?**

- a) There is a case for extending GLAA licensing into new sectors. The case should be evidence based on the prevalence of:
  - i. Widespread, endemic egregious labour market exploitation;
  - ii. Gross tax evasion, money laundering and criminality;
  - iii. Prevalence of vulnerable workers at risk of abuse up to and including modern slavery.
- b) Three sectors which on the face of it meet these criteria are:
  - i. Hand car washes
  - ii. Garment and textile manufacturing
  - iii. Nail bars

**EAS**

**14. Should EAS remit be extended to cover:**

**a. regulation of umbrella companies and other intermediaries in the supply chain;**

- a) Myriad schemes exist to reduce PAYE and NI due to HMRC through travel and subsistence or allowable expenses schemes. These schemes are operated by an industry of intermediaries and service providers. Some schemes are tax evasion contrary to law, some are aggressive tax avoidance where the law is unclear, some are legal tax avoidance loopholes. Competitive advantage is achieved and the prospect of great profit is tempting. Indemnity is offered to recruitment businesses. Barriers to entry are minimised. Enforcement outside of the GLAA sector is non-existent and use of such schemes is endemic. Models evolve and adapt.
- b) The role of such intermediaries (and artificial constructs which seek to achieve the same effect) and their position in the future world of work and impact on the rights of workers should be a matter for detailed review by Government.
- c) EAS remit should be extended to cover the regulation of umbrella companies and other intermediaries in the supply chain. Some form of registration or certification should apply to intermediaries.

**b. compliance under the Agency Workers Regulations (requiring employers to treat agency workers and permanent staff equally on certain contract terms)?**

- a) The right to equal pay for work of equal value does not extend fully to agency workers. The right to equal pay under the Agency Workers Regulations 2010 does not exist for the first twelve weeks of an assignment nor where there is a Section 10 compliant permanent contract providing for pay between assignments (the so called Swedish Derogation) imposed. This should be re-examined.
- b) The Swedish Derogation is not a model generally favoured by recruitment companies. It is a model often imposed by large employers, brands and retailers with the financial saving retained by these businesses.

**15. Should employment agencies be required to provide greater clarity on the information they provide workers, for example explaining all deductions and setting out the full amount workers will get paid in people's contracts?**

- a) ALP believes that this is currently appropriately legislated for.

**16. How can EAS evolve to deal with the emergence of online platforms and apps which provide job finding service?**

- a) EAS should enforce their powers as they apply to these online platforms and apps.
- b) There should be an evidence based approach to determining whether further regulation is required of these online platforms and apps.