

**ETI RESPONSE TO GOVERNMENT CONSULTATION:  
TACKLING EXPLOITATION IN THE LABOUR MARKET**  
4 DECEMBER 2015

**The case for more effective enforcement**

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

- Yes  
 No  
 Not sure

Please give your reasons

There is a clear need for more to be done to tackle labour market exploitation not only in the UK but also in global supply chains, evidenced by an increased incidence of cases exposed in the media.

However, this consultation has not provided a clear definition of what is included in the concept of 'organised' labour market exploitation. We think this term should apply both to labour exploitation resulting from organised crime, as well as systematic forms of exploitation driven by unscrupulous and unethical businesses that take advantage of vulnerable workers.

We would argue that organised crime is relatively well covered by existing national and international systems of policing, intelligence and security cooperation, as compared with the far bigger scale of labour exploitation resulting from unethical business practices and inadequate protection of vulnerable workers. It is the latter that frequently reaches us through reports from active companies and the media.

We would want to see more effective government regulation, investigation and enforcement of labour standards to prevent cases of labour exploitation. We have strong evidence that gross exploitation is taking place in sectors that are not currently regulated by the GLA. Our corporate members, in their efforts to act responsibly, are concerned about the gap in monitoring and enforcement of labour standards, as well as the lack of regulation of labour providers in other sectors, such as apparel & textiles, care, construction, cleaning and logistics.

Effective regulation and licensing enables companies committed to responsible and ethical labour practices to be assured that they are operating on a fair and level playing field and will not be undercut by unscrupulous employers that exploit workers with impunity.

**A new Director of Labour Market Enforcement and more flexible enforcement**

2. Do you agree with the following statement?

*"Establishing a new Director for Labour Market Enforcement to set the strategic direction of the enforcement bodies will be effective in tackling worker exploitation"*

- Yes  
 No  
 Not sure

Please give your reasons

It is difficult to determine how effective a new Director for Labour Enforcement can be as there is no information provided on how the Director's priorities will be set, what authority the post will exercise or what resources will be attached to this post. We do not know whether the primary role of the Director would be the protection of workers, enforcement of immigration controls or identification of losses of public revenue, and would not want to see a blurring of lines between these.

The Director's office and public bodies overseen by it need to be sufficiently resourced to carry out the necessary work to tackle labour market exploitation. We would want to be assured that the Director would be enabled to play a genuinely strategic role, and not have to be responsive to short term expediencies. If this is not assured, it risks a reactive role, subject to constantly changing priorities and inefficient allocation of resources.

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

The Director of Labour Market Enforcement should have the protection of vulnerable workers and prevention of exploitation as their primary role.

We see the value of coordination and improving systems of communication between the public bodies through a central point, and believe this can support more effective ways to tackle labour market exploitation. This could be an important role for this post.

We would like to see a statutory duty imposed on the Director to consult with stakeholders in setting strategic priorities, allocation of resources between various public bodies, and in developing an enforcement strategy. He/she should also regularly consult with key stakeholders (including companies, trade unions and civil society organisations) to inform his/her reports to parliament.

#### New offence of aggravated labour law breach

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

- Yes  
 No  
 Not sure

Please give your reasons

There is not enough information as to which labour law offences an aggravating offence would apply and what resources will be available for this. There are currently very few investigations or prosecutions for existing forced labour or labour law offences.

As such, any new offence must be combined with strengthened monitoring and inspection of labour standards and commensurate predictable resources to enable this to be effective. Any new offence should not divert or change resources away from the essential functions of monitoring and inspection of existing labour standards.

There would be value in having stronger penalties for repeat breaches of labour law, and for breaches involving coercion or abuse of vulnerability. Financial penalties incurred through prosecution of agencies who fall foul of regulations for employment agencies could act as important deterrents.

**We are concerned about potential confusion between this proposed new offence and existing offences set out in the Modern Slavery Act.** A new offence is only useful if it covers acts that not already covered under other legislation. In this case, it is not clear what these would be. We would want to avoid a scenario in which, inadvertently, this new offence could undermine application of offences under MSA, as it could offer a possibility of a plea for a less serious offence.

It is also important to point out that **vulnerable workers are unlikely to use existing mechanisms such as the Employment Tribunal system to address grievances or pursue claims.** They are likely to be frightened of losing their jobs, being threatened by violence or other forms of punishment and recrimination. There are few mechanisms in place for prosecutions of those responsible for depriving workers of their rights other than the Gangmasters Licensing Authority (GLA). Consideration should be given to how any new offence would deal with this problem. Anonymised whistle-blowing systems; improved access and availability of independent, credible and well-resourced helplines; and increasing opportunities for effective trade union representation – could help to build trust amongst vulnerable workers to report grievances, and provide better intelligence for authorities and civil society to take action.

5. Which of the options described would be effective in tackling labour market exploitation?

- A) create an offence involving a motivation intention to deprive a worker of their rights or to exploit a worker in connection with the commission of the offence;
- B) create a new type of improvement notice;
- C) both A) and B);
- D) None of the options.

Please give your reasons

As stated above, a new offence is only useful if it covers acts that not already covered under other legislation. In this case, it is not clear what this new offence would add, and we are concerned that it could undermine application of offences under Modern Slavery Act. Rather we would like to see existing laws more effectively applied and more prosecutions resulting from this.

More detailed comments on (A) & (B) set out below.

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

We do not see additional benefits to the proposed new offence and would rather see effective application of existing law. The way the proposed offence is structured, a labour law offence would need to be committed and the prosecution would need to show that the motivation for the offence was the deprivation of the worker's rights. Criminal law principles require that the prosecution prove that the acts that make up an offence are accompanied by an intention to commit those acts. An offence would need to have 'strict liability' to be proven in a court of law, so 'intention' may be easier to prove than 'motivation'.

However, we do think there are a number of other ways that rogue companies could be held liable for their actions, for example in recent Scottish Modern Slavery legislation and there is precedence for this in environmental law.

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

See above; Motivation has a 'mental' element, which would be extremely hard to prove in a court of law.

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

We believe that an enhanced improvement notice may be effective in ensuring that worker violations are remedied immediately, particularly where the improvement notice requires repayment of monies owed to workers. By making failure to comply with the enhanced improvement notice an offence, employers will be more likely to speedily comply.

That said, monitoring compliance with improvement notices and taking action in the case of non-compliance is resource-intensive for enforcement bodies. Adequate resourcing would need to accompany any such measure.

#### Information sharing

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

- Yes
- No
- Not sure

Please give your reasons

Information sharing between enforcement bodies and other organisations is a critical enabler for identifying and improving the situation for vulnerable workers. There are many agencies that touch this area in one way or

another, therefore co-ordination of communication and intelligence is essential. We would like to see more information shared on patterns and trends in labour abuses so that the trail of intelligence can be better pursued.

However, the purpose for which intelligence and data will be shared is not clear from the document. If the 'information hub' is established in the interests of protecting vulnerable workers and preventing exploitation, then this information flow would be worthwhile. If it has other purposes such as immigration non-compliance, this would not be in the interest of workers.

All workers have rights under international and UK labour law – regardless of their immigration status – and these should remain paramount when dealing with cases of exploitation.

### Reforming the GLA

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

- Yes, expand the role of the Authority  
 No, retain current model  
 Not sure

Please give your reasons

The Ethical Trading Initiative, its members and stakeholders were instrumental in advocating for the Gangmasters Licensing Act and the formation of GLA. We have repeatedly called for an extension of its remit, including during the consultations and debates around the Modern Slavery Act.

Through its licensing scheme, co-ordination with law enforcement bodies, and through its partnership model with key stakeholders, the GLA has played an essential role in raising labour standards and preventing the exploitation of vulnerable workers in the UK food supply chain. It acts to create a fair and competitive trading environment by granting licences to businesses operating in compliance with the GLA standard, and provides a clear barrier to illegal and unscrupulous labour providers that exploit and abuse workers. In this way, the GLA creates a level (and competitive) playing field.

However, we have been consistently clear that the remit of the GLA should not be extended without a matched increase in its resources. The consultation document states that all amendments to the role of inspection agencies will take place 'within the total envelope of available funding'. We do not agree that the GLA is able to do more with less. There is a strong risk that the effectiveness and quality of the GLA's role will be severely impacted without appropriate resourcing.

ETI and our members (which include almost all the major supermarkets and therefore includes their suppliers) are fundamentally opposed to a watering down of the GLA's current functions, role or remit. Reducing GLA workplace inspections significantly increases the burden on retailers to carry out additional checks on suppliers, and leaves them exposed if and where exploitation is found. Companies do not have professional competence, expertise or mandate to deal with complex investigations, and need to know that there is a competent authority able to ensure compliance with existing standards and regulations, with serious consequences for those who do not comply with the law.

We believe that a licensing regime has proven to be effective. We therefore support retaining the licensing system for the sectors over which the GLA currently has a role and remit. But we are also concerned that the types of exploitation that gave rise to the GLA are prevalent in other sectors which do not have a regulator. Vulnerability to exploitation by labour providers, and the risks associated with use of contract labour, seasonal and migrant labour can be found in many other areas that are not currently covered by appropriate regulation. One example of this is the apparel & textile sector in Leicester – see [link to ETI commissioned report](#), but there are many others in the care, construction, hospitality and cleaning sectors too – exposed in media stories.

As such, we believe that an expansion of the GLA's licensing, investigation and enforcement powers beyond the food and agriculture sectors would go a long way to levelling the playing field in other sectors too. However, as

stated above, resources at the GLA are already stretched and it is essential that the GLA is sufficiently resourced to expand its role.

In addition, an expansion of GLA powers should not dilute its existing work of monitoring and managing labour standards across the board, whether they are organised offences or not. In other words, the critical prevention role that the GLA plays to protect vulnerable workers and to prevent exploitation from taking place in workplaces should not be compromised or diverted to focus primarily on 'organised' labour exploitation.

This consultation does not consider alternative and complementary ways in which the expansion of the GLA could be funded. We believe there are a number of ways to resource a more comprehensive system to tackle labour exploitation and adherence to labour standards through public-private funding and there are a number of existing successful models for this such as licensing fees, apprenticeship schemes and levies. However, the relevant agency would need to have the authority to manage and retain income received and to be able to deploy necessary resources and expertise as required.

### The objectives and remit of the new Authority

11. Do you agree that the mission of the new Authority should be to prevent, detect and investigate worker exploitation, in support of the Director's annual plan?

- Yes  
 No  
 Not sure

Please give your reasons

We would like to see a strengthening of investigative powers and to pursue offences of labour law breaches.

However, we are strongly opposed to the idea of a 'flexible enforcement' approach and allocation of resources between agencies on an annual basis. Tackling labour market exploitation requires long-term planning and investment, expertise and establishing relationships of trust and effective coordination between different agencies and stakeholders. One labour inspection body (NMW, GLA or EASI), should not lose out at the expense of another and we would not want them to be competing with one another for resources. We believe therefore that there is a role for a genuine and strategic approach to labour market regulation that seeks to build on the individual competences and mandates of these agencies, with clear objectives that foster a spirit of effective collaboration.

Resources deployed or withdrawn on an annual basis would present serious risks of focusing only on the most egregious cases of labour exploitation. To tackle the problem in the long-term, prevention is critical. That means that the government's obligation to protect workers, and businesses' responsibilities to respect their rights under existing labour law must be upheld and monitored. Without that, a culture of impunity can prevail. If some issues fall through the cracks (such as failure to pay minimum wages, uphold working hours or health & safety regulations), others tend to follow. Often, it is a combination of factors that lead to situations of labour exploitation, and investigation of one issue often flags up others.

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

- Yes  
 No  
 Not sure

Please give your reasons

In the context of budget cuts to government departments and limited resources, we feel the most important role of any new Authority must be to strengthen the application of labour standards, to ensure monitoring and enforcement. The role of government should be to ensure that workers are protected, and to ensure that companies face consequences if they fail to respect the human rights of workers by exploiting and abusing them.

When regulation fails to be applied across the board and is applied only selectively to some situations, cases are not followed through. Determination on the priority given to some cases over others is subject to interpretation and individual priorities. In that context, there is a risk that application of the rule of law is compromised, and there is lack of clarity about who is accountable and responsible for what. Cases of exploitation will fall through the cracks and there is a risk of the slippery slope of legal manipulation and a culture of impunity for some.

There are established voluntary codes of conduct and voluntary accreditation schemes already. The ETI's code of practice is the oldest, most credible and globally recognised voluntary code of practice because it is based on international labour standards and was negotiated by its tripartite constituents. Companies join as members and agree to uphold a set of principles and standards. They develop specific plans and activities drawing from available intelligence. They also accept that they have a role to play in empowering their suppliers, increasing awareness and in undertaking specific projects etc.

Whilst the GLA can play a role in sharing lessons learned and updates on their findings. However, we would not want to see training and other services detracting from the GLA's core mandate or diverting from its limited human and financial resources. It can make available its expertise (as it does already) by working with and through other organisations that offer training.

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

- Yes  
 No  
 Not sure

Please give your reasons

See response above. We would not want to see a commercial orientation the GLA. It would send all the wrong messages and divert attention away from what is most important.

That said, we believe that there are a range of funding models that could be explored to share the cost of regulating supply chains between the public and private spheres. If the GLA was able to retain assets confiscated, and if the licensing fee was set at appropriate rates, it could be a self-sustaining and viable funding model. Other models of funding such as apprenticeships and levies (to regulate the gambling industry or carbon emissions) could be explored.

14. What other tasks might the new Authority perform?

The new Authority should focus on its primary functions of detecting, investigating and preventing labour exploitation, and ensuring that labour law is enforced.

#### **Powers of the New Authority**

15. Do you agree that the new Authority should be able to investigate labour market breaches and offences that fall under the remit of the new Director, including the new aggravated breach offence and Modern Slavery Act offences, as well as breaches of National Minimum Wage/National Living Wage and employment regulations, where they are connected with labour exploitation?

- Yes  
 No  
 Not sure

Please give your reasons

While not repeating the points made earlier about the lack of clarity on the post of the Director and the potential new offence, we would like to see a strengthening of investigative powers and to pursue offences of labour law breaches. However, as stated above, we are concerned about blurring of roles and responsibilities between the GLA and its Board, the new Director role, the Independent Modern Slavery Commissioner and other bodies.

Coordination is essential, but lack of clarity will lead to unintended consequences in which cases fall through the cracks because everyone and no-one is responsible or accountable for acting or pursuing specific breaches of the law.

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

- Yes  
 No  
 Not sure

Please give your reasons

We would strongly argue that labour law offences are investigated and acted upon across all sectors of the labour market. We are concerned that effective regulation in one sector serves to drive those who seek to systematically exploit workers into other less scrutinised sectors. Therefore, a comprehensive approach would be far more effective. However, this will only work if properly resourced. There would need to be a substantial increase in resources to reflect the wider remit and new powers to ensure the new Authority has expertise across the whole labour market.

17. Are the investigative powers proposed appropriate given the new Authority's functions?

- Yes  
 No

If No, which ones should not be designated?

- The ability to enter and search premises with a warrant authorised by a Justice of the Peace (under section 8 of the Police and Criminal Evidence Act (PACE))  
 The power to enter premises to execute an arrest warrant or for the purpose of arresting someone for an indictable offence (under section 17 PACE)  
 The power to search premises controlled by person under arrest (under section 18 PACE)  
 The powers to search a person at time of arrest and, when a person is arrested for an indictable offence, to search premises in which person was immediately prior to arrest (section 32 PACE)  
 The power to use reasonable force in exercise of PACE powers, (section 117 PACE)  
 The ability to seize evidence and then sift through it under section 50 of the Criminal Justice and Police Act.

Please give your reasons

The investigative powers proposed are appropriate if the functions of the new Authority are clarified and meet our concerns raised above, and if the necessary resources enable them to use these powers effectively.

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

The new Authority should be able to issue civil penalties, reimbursement orders and improvement notices for labour law breaches.

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

- Yes  
 No  
 Not sure

Please give your reasons

It makes sense for the new Authority to access powers to investigate money laundering offences and remove assets from those that benefit from offences. This not only indicates clearly that the offence is taken seriously but acts as a deterrent to those who might consider such exploitation.

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

Requesting assistance from 'relevant organisations' is clearly a way to enhance the effectiveness of the Authority, and should improve co-operation with other enforcement bodies.

21. Which organisations should this new power apply to?

This power should apply to the police and National Crime Agency, but not to immigration authorities. It would also need to build trust among vulnerable workers by working with key stakeholders such as migrant worker organisations and trade unions to uncover cases of labour exploitation and improve its intelligence on where it is to be found.

22. Should other enforcement organisations be given the 'right to ask' the new Authority to offer operational support?

- Yes  
 No  
 Not sure

Please give your reasons

Yes, provided it is a right to ask and the Authority has the final say over how it uses its resources. We would like to see public and private institutions provide credible information to the Authority, seek its guidance and be an active part of the effort to tackle labour market exploitation.

## Licensing

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

- Yes  
 No  
 Not sure

Please give your reasons

The ETI and its members commend the efforts and achievements of the GLA and support the current licensing criteria.

The GLA has an internationally recognised reputation for excellence and effectiveness through licensing of labour providers, and its role in investigation and enforcement in partnership with its stakeholders. We would not want to see its reputation, role or remit undermined or diluted and believe that the licensing role is key to this.

Through its licensing scheme and co-ordinated approach with law enforcement bodies, the GLA has played an essential role in monitoring labour standards and preventing the exploitation of vulnerable workers in the UK food supply chain. It also acts to create a fair and competitive trading environment by granting licences to businesses operating in compliance with the GLA standard. This barrier to entry prevents rogue businesses from accessing the market and undercutting legitimate labour providers through worker exploitation, therein creating a level (and competitive) playing field.

Important research conducted by the Association of Labour Providers (ALP) has consistently found that GLA licence holders are strongly in favour of licensing, perceive that the GLA is doing a good job and believe that it has improved conditions for workers.



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

While it is incumbent on any institution to review the effectiveness of any given mechanism from time to time we do not believe the current licensing regime needs to be reformed.

25. Do you agree that we should introduce a more flexible approach to licensing, based on a risk assessment, judged on a sector by sector basis and agreed by Ministers and Parliament?

- Yes  
 No  
 Not sure

Please give your reasons

We want to see the GLA's current licensing regime retained. We are strongly opposed to the idea of a 'flexible approach to licensing'. Standards must be applied across the board, without exception particularly as those seeking to exploit workers have proved adept at identifying opportunities and weaknesses of labour market systems. If they are applied selectively or on the basis of a subjective assessment of risk, they will fail to have the necessary powers to create a fair and level playing field, risk reducing their credibility for labour providers, with business and with the public. This point cannot be over-stated.

While we see a role for the new Authority to set out a genuine multi-year strategy and have this reviewed by Ministers or Parliamentarians, we do not believe that they are in a position to make operational or tactical decisions and lack the skills to assess risk in an area that is complex, requires expertise, sensitivity and deep knowledge relating to complex business operations, supply chains and the human rights and dignity of workers. The risk of involving Ministers and Parliamentarians in such decisions is that priorities become influenced by short term political or departmental considerations and are not driven by a well-informed strategy.

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

- Yes  
 No  
 Not sure

Please give your reasons

We believe that a licensing regime is the best way forward and we are keen that licensing is retained for the agriculture, horticulture, shellfish gathering, and food processing sectors. While progress has been made in each of these sectors, labour market dynamics are such that if regulation were removed the risk is that there would be the opportunity to reintroduce exploitative practices by those willing to exploit labour for gain.

### Governance and oversight of the new Authority

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

- Yes  
 No  
 Not sure

Please give your reasons

In principle, we would support the new Authority being an Executive Non-Departmental Public Body (NDPB) with its own Board and budget.

However, we are concerned about a potential confusion or blurring of lines between the role of the new Authority, the Director for Labour Market Enforcement and the GLA. This could lead to failures in accountability and responsibility inefficiencies and the risk of cases of labour exploitation falling between the cracks or subject

to subjective views about the relative importance of one issue over another, particularly in a climate of resource constraints.

While we see the value in the new Authority and its coordination role we feel strongly that the GLA and its Board must remain independent to retain its high level of credibility and trust in tackling and preventing labour exploitation.