

Response from the Ethical Trading Initiative Consultation on Labour Market Enforcement Strategy 2018/2019

October 13, 2017

Summary

The Ethical Trading Initiative (ETI) welcomes the **multi-stakeholder consultation** to inform the development of the Director for Labour Market Enforcement's Strategy 2018 / 19. Below we set out our responses to questions relevant to our mandate in the consultation.

We welcome the expanded remit of the Gangmasters and Labour Abuse Authority (GLAA), including the granting of investigatory and enforcement powers to the GLAA. A **strong, state-led licensing system** is needed to combat exploitation and to provide a level playing field for businesses operating in the UK in sectors where the risk of modern slavery is high. We would also like to see its licensing remit extended to all labour providers in high risk sectors, particularly where they recruit into low-skilled, low-paid jobs, with temporary or precarious contracts – such as apparel and textiles, general manufacturing, logistics and warehousing. This expanded remit will require additional **financial resources and expertise**.

Effective regulation and enforcement of labour rights through prevention and deterrent strategies should include a robust system of labour inspections where risks are highest. This is critical for the protection of labour rights. We would like the Director of Labour Market Enforcement to consider the creation of a **single labour inspection unit** that would bring together existing departments that have different remits – particularly the GLAA, the Employment Agencies Standards Inspectorate (EASI), HMRC and the Health and Safety Executive (HSE). We would like to see this single unit **coordinating inspections and monitoring compliance** of key areas of labour legislation, such as wages, overtime, holiday pay, health and safety and employment contracts, and ensuring that workers have access to all their entitlements. This would avoid confusion about where responsibility lies, and where to go for help and advice. It would enable the government to ensure that vulnerable workers do not fall through the cracks. It would also be more efficient, as it would enable the pooling of resources and expertise.

The labour market enforcement strategy should include a focus on **public procurement**. We would like all public bodies to be subject to greater levels of scrutiny and accountability; to prevent and mitigate labour rights abuse and exploitation in their operations and in the goods and services they procure. Government procurement policies set the tone for the private sector in the UK with regards to corporate purchasing practices, and government agencies should therefore lead by example and serve as a driver for positive change in the protection of labour rights in the UK and in global supply chains.

The rapidly changing UK labour market, the development of 'just-in-time' business models and proliferation of zero-hour contracts has left certain groups of vulnerable workers open to exploitation. We believe it is vital to ensure that there is a clear (and enforceable) **definition of decent work** that sets out minimum standards and expectations, including *temporary* work. There should be a requirement for companies to justify why some workers should be on temporary rather than permanent contracts, and all workers should be entitled to core labour rights, regardless of their immigration status, gender or the nature of their contract.

The right to **freedom of association and collective bargaining** should be strongly emphasised in the labour market enforcement strategy as critical components to preventing



the abuse and exploitation of workers. ETI also recommends that gender dimensions of labour market enforcement are made more explicit in the strategy, as women face additional barriers and discrimination in the workplace.

Whilst we recognise the value and importance of various private, voluntary, buyer-led initiatives designed to improve compliance, we also know that such initiatives are insufficient without complimentary enforcement by the government of a strong **regulatory framework**. This includes reporting through the **Modern Slavery Act**. As modern slavery and the exploitation of workers in supply chains is an international challenge, we recommend **collaboration with similar bodies in Europe and globally** in the development and enforcement of laws and strategies.

We welcome **intelligence sharing** and suggest that a regular, inclusive, multi-stakeholder forum be created to facilitate an effective information and intelligence exchange.

We would welcome further discussion on and analysis of potential new rules governing **'joint liability'** in supply chains. Any new laws or policies should be carefully developed so as not to undermine ongoing efforts to tackle abuse, or result in the creation of rules that are unenforceable on a practical level, or focus primarily on public facing businesses rather than other more high-risk sectors.

Many non-public facing companies are behind in their understanding of their responsibilities to respect labour rights, and are likely to carry higher risks of labour exploitation and abuse in their operations and supply chains. Meanwhile, well-known brands and retailers are already subject to public scrutiny and are often doing more to tackle labour rights abuses than others. We would suggest a thought through use of **naming and shaming** tactics when options for constructive cooperation to address issues are exhausted.

There is strong evidence that all goods and services carry risks of labour abuse and exploitation. Consequently, the idea of labelling some as **'hot goods'** tainted with the risk of modern slavery may inadvertently take the focus off systemic changes in business practices and government enforcement that would ensure all products and services are made by workers in decent jobs.

Background: The Ethical Trading Initiative

The [Ethical Trading Initiative](#) (ETI) is a membership organisation bringing together companies, trade unions and NGOs to improve the lives of workers in global supply chains. All corporate members agree to adopt and report against the ETI Base Code of labour practice, a globally recognised code of conduct based on the standards of the International Labour Organisation (ILO). We have approximately 90 company members, which includes major retailers and supermarkets based in the UK and abroad.

ETI works to promote the implementation of the UN Guiding Principles on Business and Human Rights (UNGPs), focusing on labour rights, with a primary emphasis on corporate responsibility to respect human rights through multi-stakeholder engagement and robust due diligence processes. Workers' ability to access their universal right to freedom of association is a critical element of ETI's approach to due diligence, as it enables workers themselves to negotiate their own terms and conditions of work, and provides a structured mechanism through which workers' grievances and access to remedy can operate. ETI also provides an important platform for all ETI members to collectively advocate with governments and policy makers to meet their responsibilities to protect workers from exploitation and abuse.



Detailed Response: Labour Market Enforcement Strategy 2018 to 2019

1. The New Intelligence Hub and Evidence of Non-Compliance:

Overall, we welcome the creation of the new Intelligence Hub, which should inform decision-making and improve effectiveness of operational work. Whilst recognizing the importance of more comprehensive evidence on non-compliance, we also recommend gathering **information on good practice** which should help in the design of solutions and the replication of effective solutions across industries and sectors. If labour market enforcement (LME) agencies would like companies to not only meet minimum standards but also drive up standards, then awareness of good practice (and understanding the motives behind such initiatives) is critical.

Unless it is operationally sensitive, we recommend creating a mechanism for **sharing Intelligence Hub resources** with all stakeholders working on modern slavery/ labour rights issues. There are important stakeholders, including companies, academia, NGOs, trade unions and community-based organisations that are generating new research and could contribute significantly to building evidence and intelligence on an ongoing basis. We suggest a **regular (quarterly) forum** involving key stakeholders could be organised to facilitate effective information and intelligence exchange.

There are other **'bigger picture' research questions**, which could contribute to more effective decision-making on tackling modern slavery issues:

- The business case for anti-modern slavery actions – i.e. the cost of modern slavery¹ in the UK and its impact on the government's budget (social costs);
- Is there policy coherence? Are there any other government policies (for example, trade, housing, migration, business development, economic growth, competitiveness etc) that generate unintended outcomes and which create greater risk of exploitation;
- The impact of buyers' terms and conditions (quality, quantity, price, delivery, timescale) on suppliers' ability to avoid or prevent exploitation and other forms of modern slavery. ETI has recently jointly with the ILO involving thousands of suppliers. We can make this available to you if helpful. We have also published a [guide on ethical procurement](#) (use link).
- The impact of fragility of employment (precarious work, zero hours, temporary work) on employees' likelihood to complain. ETI is working on operational grievance mechanisms and reviewing remedy systems. We will share these in due course.

2. Awareness raising (including training)

We believe that awareness raising is not a solution on its own but can complement other prevention or enforcement activities. We would welcome awareness raising and education activities targeted towards at-risk migrant workers/refugees in their own languages. Where a helpline exists, it is critical that vulnerable workers trust its anonymity and protection from further potential victimisation or loss of job, and that staff have the appropriate skills, capacity and understanding of their role in protecting workers.

We welcome more training for employers and employees. However we would advise that first an analysis is done to ensure that this isn't being provided already by others and an assessment made about whether this is the best use of government resources. There are already several organisations, including ETI, which deliver training on ethical trade, modern slavery, due diligence etc.

¹ Modern Slavery Strategy gives estimates only for sexual exploitation (£890 million a year) which is only one element of modern slavery. For comparison – annual budget of law enforcement agencies is about £25 million.



3. Reactive vs proactive

We support strengthening the role and capacity of labour inspections (the UK has one of the lowest numbers of labour inspectors in the EU²), especially in priority sectors, who should enforce labour laws. Having a single labour inspection unit that coordinates **inspections and monitors compliance** of key areas of labour legislation could increase effectiveness and allow more resources for proactive work.

4. Diverse enforcement tools – penalties

For people to take penalties seriously, fines could be higher and other sanctions more robust. If fines are too cheap, there is no incentive for companies to meet requirements of the law (if they are paying very little in fines), and non-compliant companies often fail to pay their due fines.

The ‘naming and shaming’ of companies may not be sufficient, because of the likelihood that ‘phoenix’ companies will take their place, working under a different name. Instead, removing a license for non-compliance, or removing rights to be an owner, a company director or a member of senior management staff³ in case of non-compliance may have a greater impact.

We recommend that fines be paid directly to the GLAA, helping to cover its operational costs. Workers need to be paid in arrears with additional penalties. There are useful lessons from Brazil, where employers must re-compensate workers for under-payment of minimum wage by an amount totalling arrears + 40% + an adjustment for inflation. This acts as an incentive for workers to make claims.

5. Joint working

We welcome the commitment to closer working relationships between enforcement bodies and with other stakeholders. Collaboration and allowing the space for such collaboration is critical, not only for exploring different perspectives, but also for more effective use of resources.

ETI is an example of how a tripartite organisation (business, trade unions, NGOs) can drive, nurture and support positive change, including calling on the government to introduce Clause 54 of the Modern Slavery Act 2015.

Freedom of association and the right to collective bargaining are fundamental to securing labour rights. More attention needs to be given to engagement with trade unions and workers’ representatives to re-establish their role at a time when trade union membership is in decline.

We recommend building closer collaboration particularly with: NGOs working on migrant/refugee, labour rights issues; local media (online and print; traditional and social) targeting migrant communities in the UK in their native languages; embassies of countries and organisations representing interests and/or providing support to victims of exploitation (e.g.

² <http://www.labourexploitation.org/news/uk-falling-behind-labour-inspection-combat-modern-slavery-new-flex-policy-blueprint>

³ document suggests that anyone found guilty of a criminal offence would be considered for disqualification from being a company director for up to 15 years; however, firstly, this is only limited to a company director’s post, which still gives a chance to take other senior management positions; secondly, it must be classified as a criminal offence which may limit the application of this type of penalty.



the Eastern European Resource Centre); NHS and Border Force; local, city and regional councils.

6. Distribution of resources, size of enforcement bodies

We welcome the GLAA's expanded remit but are concerned about available resources. Whilst we recognise that the GLAA has more resource for enforcement – particularly in high-risk areas, we are concerned that it has insufficient resources for prevention, routine investigation and monitoring. This is arguably as important, if not more important for long-term change.

We recognise limitations on government resources, but feel that there are a range of financial models that could be explored, including charging higher licensing fees to companies, and higher penalty fees from non-compliant businesses. These costs could cover more extensive licensing and more robust labour market monitoring and enforcement.

7. Long supply chains

Our corporate members tell us that it would be very complex and challenging to limit the number of layers in supply chains. However, the UNGPs have established the responsibility for companies to manage, mitigate and prevent human rights harm caused by their own operations and supply chains.

ETI has developed a Human Rights Due Diligence Framework that sets out the key steps for companies to take to manage risks and remedy harm, including reviewing the complexity and length of their supply chains (see resource listed below). Reviewing their business models are critical elements of corporate responsibility, but there is no quick and easy solution to shortening the length of the supply chain as each product and company is very different.

7.1 Licensing

We do not support efforts to soften the regulatory framework and believe that a strong licensing system of labour providers must remain at the centre of labour market enforcement. We do not consider voluntary, non-state led certification schemes as sufficient due to their limited impact and power of enforcement. Private initiatives should complement state-led regulatory system, not substitute for it.

We recommend considering a requirement for regular (annual) renewal of licenses to ensure that once a license is issued, companies do not lower their commitments and standards. Without regular renewal, licenses may encourage complacency and a lowering of standards;

We recommend extending the original GLAA focus on the farming, food processing and shellfish gathering sectors to other high-priority sectors such as the garment industry, general manufacturing, logistics and warehousing, furniture and upholstery, car washes, construction, social care, cleaning, hospitality and courier services.

We recommend the licensing process includes consultations with workers organisations to maximize the objectivity and transparency of the process, and where possible, that the licensing process includes the question about whether companies recognise the right of workers to freedom of association.

Considering the role of recruitment agencies in the temporary job market, we suggest requiring recruitment agencies to include clear information about workers' rights (pay, hours, payment, social guarantees, grievances etc) in their workers' contracts.

7.2 Joint liability



We support the idea of investigating **joint liability** as a way to increase companies' accountability, though accept that more research needs to be done on the pre-conditions to make it effective. It is likely to work best where there is a focus on specific issues, such as living wages, working hours etc). We recommend exploring the experience of joint liability in Australia, Belgium and the USA. There are instances when some ETI members have voluntarily chosen to apply joint liability with suppliers to address risks to workers in the lower tiers of their supply chains.

7.3 Public procurement

We strongly support the public sector leading by example by embedding ethical trade principles into their procurement policy and practice. There are examples of good practice: university purchasing consortia, TFL, BBC Worldwide, NHS Supply Chain and the Welsh National Assembly are some good examples to draw on. Public institutions should be drivers of change and set the standard for the private sector in terms of respect of labour rights.

8. Giving workers a voice

There is a need for better knowledge about the profile of who affected people are/tend to be (origin, language, culture, geography, age, gender, legal status etc) to target prevention measures and engage with them more effectively.

We would welcome a clear statement by the DLME about the right of all workers – regardless of immigration status - to freedom of association and collective bargaining.

We believe that trade unions and particularly those representing current/likely victims of modern slavery (low paid, temporary workers, migrants, refugees, etc) are critical partners to address issues of modern slavery. The presence of well-functioning, independent and respected trade unions/ workers' committees would prevent or reduce the likelihood of modern slavery existing in a workplace.

Annex: Resources on good practice and non-compliance

1. Resources ETI/its members can share regarding non-compliance:

- ETI [Report](#) in collaboration with University of Leicester "New Industry on a Skewed Playing field: supply chain relations and working conditions in UK Garment manufacturing", focus on Midlands and Leicester, 2013;
- [Report](#) "Corporate leadership on modern slavery";
- Confidential information about issues in ETI members' supply chains;

2. Resources ETI/its members can share regarding good practice:

- ETI reporting framework and other more recent publications:
 - [Guide to buying responsibly](#);
 - [Human rights due diligence framework](#);
 - Base code guidance: [Modern slavery](#);
 - Base code guidance: [child labour](#);
 - Base code guidance: [working hours](#);
 - Base code guidance: [Living wages](#);
 - [Identifying, managing, mitigating and preventing forced labour and modern slavery](#);
 - [Ethical procurement for health workbook](#);
 - Addressing worker vulnerability in agricultural and food supply chains ([vulnerable workers toolkit](#));
 - [Integrating ethical trade principles in core business practice](#);

- [Due diligence in agricultural supply chains: counter-acting exploitation of migrant workers in Italian tomato production;](#)
- ETI case studies (on our website)