Focus on Labour Exploitation

Tackling exploitation in the labour market consultation

FLEX Response to questions put by BIS/HO

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Focus on Labour Exploitation (FLEX) works to end human trafficking for labour exploitation. To achieve this, FLEX works to prevent labour abuses, protect the rights of trafficked persons and promote best practice responses to human trafficking for labour exploitation by undertaking research, advocacy and by building awareness in this field.

X Charity – Registered charity number 1159611
FLEX Summary:

This consultation proposes an expanded role for key UK labour inspection agencies, proposing extra powers of criminal investigation for the Gangmasters Licensing Authority (GLA) and for labour inspection priorities to alter according to an annual strategy proposed by a new Director of Labour Market Enforcement. The consultation operates on the assumption that there is ‘general labour market compliance’ and the key problem faced in the UK is one of ‘organised labour market exploitation’. The consultation proposes a shift away from licensing towards voluntary schemes.

The problems posed by this approach include:

- There is no clear definition of terms included in the consultation, including ‘organised labour market exploitation’; and ‘serious exploitation’; ‘labour market exploitation’. Nor is there an international legal definition of exploitation, making it difficult for consultation respondents to engage with such terms in a meaningful way.
- Labour inspection agencies have seen steep declines in budgets since the 2010 Spending Review – including more than 20% cut to the GLA – and yet this consultation is requiring them to do more on less;
- Criminal investigations absorb huge resources and could distract from core licensing and monitoring functions;
- Voluntary accreditation schemes are helpful when supported by robust State regulation and enforcement, but the UK has one of the weakest labour inspectorates in Europe and is proposing weakening it further through this consultation;
- Shifting priorities for labour inspection agencies according to an annual strategy produced by a Director of Labour Market Enforcement risks threatening the years of expertise agencies like the GLA have built up in their specialist areas of work;
- This consultation is taking place alongside debate on the Immigration Bill in the Houses of Parliament, discussions there impact on responses to this questionnaire and responses to this consultation should have been provided in advance of parliamentary scrutiny of labour market enforcement measures in the Immigration Bill.
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

- To tackle all forms of labour exploitation labour inspection that upholds labour standards is key to ensuring that unscrupulous employers do not seek to profit from gaps in labour enforcement.

- However, without a clear legal definition of ‘organised labour market exploitation’ it is difficult for FLEX to respond to this question. FLEX is guided by international principles, treaties and normative legal texts in relation to human trafficking, forced labour and slavery. There is no international legal definition of exploitation and ‘organised labour market exploitation’ is not a term that makes sense to FLEX given the nature of exploitation as it arises from non-compliance in the labour market.

- As set out by the Migration Advisory Committee (2014, 4), “It is important to note that labour exploitation can occur along a continuum or spectrum.”

- The assertion in the Consultation document that ‘there has been a shift from individual abuses of employment regulation towards increasingly organised criminal activity amounting to labour market exploitation’ does not reflect FLEX’s findings nor FLEX’s work with vulnerable workers.

- FLEX finds that the majority of the cases we come in to contact with of labour exploitation arise from individual abuses of employment regulation, examples of such cases include:
  - A woman working in the cleaning sector, paid £2.70 per hour, worked long hours and was not provided time off. When she complained about the conditions she was threatened in to even more exploitative work that amounts to forced labour.
  - A man came to the UK on a domestic worker visa, initially the work was hard with long hours and little pay, when he complained his male employer sexually exploited him, threatening him with denunciation to the authorities and removal to his home country where homosexuality is illegal.

- Based on these findings FLEX, in line with the International Labour Organisation Protocol of 2014 to the Forced Labour Convention, 1930, believes forced labour should be tackled in the UK by:
  - “undertaking efforts to ensure that: (i) the coverage and enforcement of legislation relevant to the prevention of forced or compulsory labour, including labour law as appropriate, apply to all
workers and all sectors of the economy; and (ii) labour inspection services and other services responsible for the implementation of this legislation are strengthened;”

- The UK has just 0.9 labour inspectors per 100,000 members of the workforce compared with 4.6 in Ireland, 5.1 in the Netherlands, 12.5 in Belgium and 18.9 in France (FLEX, 2015, 3). The UK therefore has one of the smallest labour inspectorates in Europe and yet the Migration Advisory Committee (2014, 4) notes that “Compliance with and enforcement of labour regulations are vital to protect vulnerable British workers and migrant workers”.

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

- Unfortunately this question is grouped in such a way that it is impossible to support a Director of Labour Market Enforcement without also supporting their setting of the strategic direction of the enforcement bodies.
- Unlike the Director of Labour Market Enforcement, the Gangmasters Licensing Authority has the protection of ‘vulnerable and exploited workers’ at its core in its mission statement and through this approach has been highly successful in identifying cases of abuse prior to its development into exploitation.
- Section 2 of the Immigration Bill proposes that the Director of Labour Market Enforcement set the strategic direction and budgets for the three labour inspection bodies: NMW teams; the GLA; and the Employment Agency Standards Inspectorate.
- There is a lack of clarity on the priority for the Director of Labour Market Enforcement in conducting this task, whether the protection of workers, the enforcement of immigration controls, the identification of losses of public revenue. Without this clarity it is difficult to support the suggestions that the Director supplant existing governance structures – particularly the independent Board of the GLA.
• There is a fundamental problem with diverting resources between agencies on an annual basis - long term operational planning will be jeopardised and inevitably one labour inspectorate will lose out at the expense of another.

• An annual strategy that attempts to provide an analysis of the risks posed in the labour market is welcome, yet a Director with a limited budget is not going to be able to accomplish this wide-reaching and complex task.

• FLEX supports the idea of a coordination mechanism between all labour inspection agencies. We believe this would ensure a strong understanding of the link between indicators of forced labour that fall within the remit of all inspection agencies is made by agencies in operations. However, FLEX does not support the diversion of labour inspection agencies from existing remits in the fulfilment of a strategic direction set by an un-resourced Director of Labour Market Exploitation.

• The existing labour inspection agencies have a deep level of understanding of their work and approach, improved coordination between these agencies is welcome but undermining their governance structures is dangerous and damaging.

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 at the core of their work, as their primary purpose.

• The Director should not have the power to override strategic directions set by existing labour inspection agencies nor to re-distribute extremely limited budgets at will.

• The Director should be required to consult with stakeholders in the development of the labour market enforcement strategy and annual plan, including with unions, worker organisations, migrant organisations and other relevant NGOs.

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 are currently very few investigations or prosecutions for forced labour or for labour law breaches. This creates a culture of impunity for labour exploitation, particularly given the relatively low penalties available for labour law offences. However FLEX is not convinced that the aggravated labour law breach offence as proposed will work to assist in tackling the exploitation of workers.

• FLEX agrees that stronger penalties need to be in place for repeat breaches of labour law, and for breaches involving coercion or abuse of vulnerability. However, rather than creating a problematic new offence, FLEX would support both an increase in the available penalties for existing labour law offences, and an increased effort to prosecute such offences. In this case, sentencing guidelines may be issued that make a) the commission of a previous labour offence, and/or b) the commission of a labour offence using one of a list of coercive means (withholding passport, threat to report to police, etc.) aggravating factors warranting an increased penalty in the sentencing of any labour offence.

• It is unclear to which offences the proposed aggravated offence will apply, the extent to which these offences are already prosecuted, and the penalties imposed. The first formulation provided is also unclear as to how the motivation element relates to the existing mental element of the offence. The term ‘motivation’ is not commonly used in criminal legislation, which usually requires ‘intention’ or ‘recklessness’ as to conduct. Unless the existing offence is a strict liability offence, the offender will need to intend the relevant criminal act (e.g. refusing to pay National Minimum Wage) and so the intention to deprive the worker of rights is already part of the offence. This means that the proposal potentially makes every labour law offence an offence of ‘aggravated labour law breach’.

• FLEX is also concerned at the overlap and confusion of the second formulation with existing offences in the Modern Slavery Act, and in particular the definition of exploitation that already exists in that Act. The forms of exploitation listed in the consultation are substantially the same as the elements and indicators of modern slavery. In many cases where these forms of exploitation are present a charge of modern slavery will be appropriate. There is however a risk that the aggravated labour law breach offence would be charged instead of modern slavery offences even where the evidence was sufficient for the latter, due to the overlap of the coercive elements. FLEX is also concerned that where the proposed offence is charged instead of a modern slavery offence, victims of modern slavery will not be recognised and referred to the National Referral Mechanism for support.
• FLEX further cautions that the success of the Gangmaster’s Licensing Authority in particular is based on its engagement with workers and its monitoring of licensing standards. The investigation and prosecution of any new offence should not be permitted to change or divert resources from this essential function, particularly where no additional resources are made available.

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

• FLEX believes 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. In many cases this will be the outcome most desired by and most useful to workers. By making failure to comply with the enhanced improvement notice an offence, employers will be more likely to speedily comply.
• However, FLEX notes that monitoring compliance with improvement notices and taking action in the case of non-compliance is resource-intensive for enforcement bodies. Adequate resources must accompany any such measure.
• Further, if both the improvement notice and the offence are in place, there would need to be clear guidance as to how an enforcement agency decides which is to be used in a given case. In cases of a severe breach, an improvement notice may not be sufficient to reflect the seriousness of the offence and to protect workers from further harm. Additionally, as the ways in which a single employer may exploit workers can both change and fluctuate over time, an improvement notice may not be effective in addressing subsequent exploitation that is of a different type to that covered by the notice.

6. What are the benefits of creating an offence involving intention to deprive a worker of their rights?
• As noted above, it is not clear how this mental element would relate to the existing mental element of the offence, and as such FLEX is not able to comment on this.

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?

• As noted above, there would be some benefit in enabling the use of coercive or ‘exploitative’ means in committing a labour law breach to serve as an aggravating factor enabling a more severe penalty for such breach. However there is serious concern that a new offence as proposed would create confusion with and undermine the prosecution of existing modern slavery offences.

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

See above.

**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

• It is still unclear for what purpose this intelligence and data will be shared and in which direction information will flow.
• In our view information that needs to be shared on labour standard enforcement relates to patterns and trends in labour abuses, for example the bogus self-employment of workers in a particular sector and the impact of such practices on incidences of exploitation.
• During House of Commons Public Bill Committee Discussions on Part One of the Immigration Bill on 27th October 2015 the Minister said of the ‘information hub’ set out in Clause 6 of the Bill:
  • “if cases of people who are here illegally are highlighted, the director would be duty-bound to report that and to pass on intelligence through the hub that is being created.”
  • If the ‘information hub’ is established in the interest of protecting vulnerable workers and preventing exploitation then this information flow would be worthwhile. However, If the ‘hub’ is established in the interests of furthering immigration non-compliance aims then it will not be in the interests of all vulnerable workers.

**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
   - [X] No, retain current model
   - [ ] Not sure

Please give your reasons
• Whilst FLEX advocated for an expanded remit for the GLA during the passage of the Modern Slavery Act in to law, we were always clear that the GLA should under no circumstances have its remit expanded without a matched increase in resources.
• In the Consultation document it is clearly stated that all amendments to the role of the labour inspection agencies will take place “within the total envelope of available funding”. Therefore FLEX views the proposal to expand the role of the GLA to be a watering down of its functions, requiring it do more with less.
• Additionally, the section on licensing suggests that licensing could be replaced. A question then arises for FLEX as to whether the GLA would receive its Grant-In-Aid budget intended to cover the cost of administering the licensing scheme. Without this the GLA will be operating on a shoestring, and expansion out of its existing sectors and into further investigatory powers in this instance represents a virtual dismantlement of the GLA.
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

- As set out above, the mission of the GLA should be to ‘work in partnership to protect vulnerable and exploited workers’ – this is its existing mission, and all key stakeholders from Oxfam to the National Farmers Union, to FLEX, to the ILO have stated that it is highly successful in its current role. To change this mission now when the GLA is making strong progress in the sectors it oversees would be dangerous and damaging.

- The GLA is internationally recognised as a leader in responding to worker abuses and vulnerability. The Council of Europe Secretary General stated in February 2014 for example “The “Gangmasters Licensing Authority” set up by the British government after the Morecambe Bay tragedy provides an example of an effective framework against exploitation and abuse. The framework's mutually reinforcing regulation, inspection and enforcement powers give it muscle and credibility.” (Mr Thorbjørn Jagland, 2014). This year the annual Trafficking in Persons report from the US Department of State also recognised the good work of the GLA and called for increased resources for the authority.

- The GLA has developed a strong knowledge of the risks and prevalence of labour abuses in the sectors in which it operates. As such FLEX believes that the GLA is best placed to determine its strategic priorities in fulfilling its mission, and its mission should not be tied to the Director’s annual plan.

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

- It is hard to see how business support work can be conducted along side the GLA’s regulation, inspection and enforcement work without diverting
from existing work and becoming a source of funds upon which the GLA relies. FLEX believes that such additional work could take the GLA away from its core license monitoring function acting as a distraction that should not be part of the work of the GLA. Many organisations offer such training, it would not add value for the GLA to do so too.

13. Should the new Authority be able to charge for such services?
   ☒ Yes
   ☐ No
   ☐ Not sure

Please give your reasons

   • If the GLA is conducting training then this should be chargeable. However, FLEX does not believe that such training should be delivered and used as a means of subsidising the extremely small existing GLA budget.

14. What other tasks might the new Authority perform?

   • The GLA should continue with its existing tasks.

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

   • FLEX agrees that it would be beneficial for the GLA to be able to investigate the labour market breaches and offences that it encounters in its license monitoring and inspection activity. The GLA’s role in these cases should be to facilitate and support the agencies with primary
responsibility for such breaches, such as HMRC NMW enforcement teams and police, not to take their place.

- However, FLEX stresses that this new power must be met with adequate resources to fund this additional activity, so as not to undermine the GLA’s existing functions. It is crucial that any additional investigative powers not lead to a diversion of the GLA’s resources from its primary function into activities that are the proper remit of other agencies.
- Furthermore, such extension should not operate to transform the GLA into a law enforcement agency. Where Modern Slavery Act offences or other serious offences are alleged, the police and National Crime Agency should lead and be responsible for the majority of investigative activities. The GLA should not initiate investigations for Modern Slavery Act offences, and should only be involved to the extent that their primary monitoring and inspection activities uncover evidence of modern slavery offences and immediate action is required to protect workers or secure evidence.

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

- Given the success of the GLA in the few sectors in which it operates, it would be desirable to extend its remit to allow investigation in other sectors of the labour market. This would ensure that exploited workers in other sectors would have a central body to turn to in order to report abuses against them and seek assistance. It would also help to improve labour standards and address widespread exploitation in other high-risk sectors, such as construction, care, hospitality and cleaning.
- However such extension cannot occur without a substantial increase in resources. Coverage of all labour sectors will require significant human resources, given the known extent of exploitation in the abovementioned sectors. The success of the GLA is attributable to its depth of knowledge and engagement in the industries in which it operates. Such knowledge and engagement would need to be replicated in other industries before any additional investigative powers could become effective. Any extension without a commensurate increase in resources would be disastrous for the effectiveness of the Agency, and would fail to fulfil its object.
• Any such extension must not divert the GLA from its existing licensing and inspection functions. These functions are fundamental to the success of the Agency, including establishing the aforementioned knowledge and engagement, and building necessary trust with workers.

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 powers above are more than sufficient for enabling the GLA to investigate a wider range of labour law offences.
- FLEX reiterates that the GLA should not be provided new powers that transform it into a law enforcement body as it will lose the trust and confidence it has developed among vulnerable and exploited workers. The police and National Crime Agency must retain primary responsibility for the investigation of criminal offences. The GLA must be adequately resourced to assist police in necessary investigative activities and priority must be given to continuing its monitoring and inspection functions.

18. Are there any additional powers the new Authority should have? Please describe and give your reasons.
The GLA / new Authority should have the power to issue improvement notices and repayment orders requiring employers to pay workers any unpaid wages or other benefits owed. Civil penalties should also be available.

The GLA / new Authority should have the power to inform principal contractors of violations found downwards in their supply chains and to require them to take remedial actions.

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

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

   • The proposal for the GLA to conduct joint operations with organisations including ‘immigration enforcement’ poses a grave threat to the trust built between the GLA and vulnerable workers.
   • Confusion between immigration control and labour inspection is one of the biggest barriers to the identification of labour exploitation. Not only are potential victims fearful of coming forward but inspectors also fail to spot indicators of modern slavery.
   • FLEX is concerned about the engagement of Immigration Enforcement in the work of the GLA. The ILO makes clear that the role of labour inspectors is to ensure workers' rights are upheld and protected, not to combat undocumented work. ILO Convention 81, the Labour Inspection Convention 1947, states that the scope of duties of labour inspectors should be focussed on enforcement and compliance with labour law and notification of abuses of such law. Convention 81, which the UK has ratified, expressly prohibits labour inspectors from carrying out duties beyond this scope where they interfere with the inspectors' impartial workplace inspections activity. The ability of labour inspectors to gain trust and uncover severe exploitation is critically undermined if their role is extended to include immigration enforcement or conducted in co-operation with immigration officials.
• Additionally, the Organisation for Economic Co-operation and Development noted in its report on preventing trafficking for labour exploitation (2011)
  i. ‘A rising challenge to effective labour inspection is the increasingly widespread imposition of measures that compel labour inspectors to conduct immigration enforcement activity as part of their workplace inspection agenda’
• Identification takes trust, support and the availability and offer of a positive alternative. Immigration control breaks trust, is not victim centred, and risks returning victims to countries where they will be re-trafficked. In addition, traffickers often use fear of immigration controls to hold people in situations of extreme cruelty.
• Confusion between immigration control and labour inspection is one of the biggest barriers to the identification of labour exploitation. Not only are potential victims fearful of coming forward but inspectors fail to spot indicators of modern slavery. In order to ensure the UK meets its international obligations to identify trafficking there must be a strict firewall between immigration control and labour inspection.
• In the USA there is a formal Memorandum of Understanding (MoU) between the Department of Labor and Homeland Security. The purpose of this MoU is to ensure that immigration control does not interfere with the protection of workers’ rights. For example, when the Wages and Hours Directorate investigates cases of unpaid wages they must not ask for immigration documents. The clear separation of roles, and the fact that workers’ rights are protected in the USA regardless of immigration status, prevents retaliation and intimidation by employers who threaten to report undocumented workers when exercising their labour rights.
• FLEX recommends that such a protocol be adopted in the UK.

21. Which organisations should this new power apply to?

None.

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
For the reasons set out above – where there is confusion between the role of labour inspectors and law enforcement, immigration enforcement or other, it severely jeopardises the work of labour inspection agencies.

**Licensing**

23. Do you agree that the current licensing criteria should be reformed?
   - [ ] Yes
   - [x] No
   - [ ] Not sure

Please give your reasons

- The licensing model operated by the GLA was introduced in order to ensure a level playing field between labour providers. This system and the monitoring of gangmaster compliance with the GLA’s eight licensing standards ensures parity between providers and reduces the risk of exploitation of workers.
- When the Gangmasters (Licensing) Bill was under discussion in Parliament in 2004, The Ethical Trading Initiative supported licensing as a means of helping companies to meet their responsibilities and to promote compliance with the law.
- The UK government Migration Advisory Committee reports that the UK is ‘light touch’ in its enforcement of employment rights, particularly compared to ‘the majority of developed countries’ that have specialist labour inspectors conducting pro-active site visits. Pro-active inspection is particularly important when individuals are held in conditions of control and therefore may not be able to leave their employer to seek help. In interviews with trafficked persons conducted by FLEX they have shared a strong desire for official monitoring of labour standards in their workplace to offer guidance, assistance and support. However proactive inspection is only effective when labour inspectors first work to build trust with workers and create an environment that facilitates good intelligence gathering and opportunities to report, regardless of immigration status.
- One trafficked man indicative of many FLEX spoke to in 2014 stated: ‘I would like people to talk to my employer about how much they pay, how much holiday they're giving, how much time we're working for them [...] Because otherwise we don’t tell anyone, we are scared because we are foreign [...] I wish someone talks to them who has a responsibility’
- A licencing and inspection framework that links to forced labour indicators is key to ensuring that there is a level playing field for
business operating in the UK, preventing rogue operators from undercutting those who play by the rules.

- Evidence in support of licensing:
- Association of Labour Providers (ALP), 2015
  The ALP conducted a survey of labour providers’ views on the GLA in April/May 2015. Comparative responses to the independent surveys are:

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<th>2008</th>
<th>2011</th>
<th>2013</th>
<th>2015</th>
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<tr>
<td>In favour of licensing</td>
<td>79%</td>
<td>71%</td>
<td>81%</td>
<td>93%</td>
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<tr>
<td>Perceiving the GLA doing a good job</td>
<td>69%</td>
<td>49%</td>
<td>55%</td>
<td>73%</td>
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<tr>
<td>Significantly improved conditions for workers</td>
<td>21%</td>
<td>12%</td>
<td>16%</td>
<td>27%</td>
</tr>
<tr>
<td>Slightly improved conditions for workers</td>
<td>39%</td>
<td>30%</td>
<td>47%</td>
<td>52%</td>
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<tr>
<td>Significantly reduced Fraud/Illega acts</td>
<td>19%</td>
<td>18%</td>
<td>17%</td>
<td>22%</td>
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<tr>
<td>Slightly improved Fraud/Illega acts</td>
<td>41%</td>
<td>51%</td>
<td>48%</td>
<td>57%</td>
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<tr>
<td>GLA significantly improved level playing field</td>
<td>12%</td>
<td>29%</td>
<td>15%</td>
<td></td>
</tr>
<tr>
<td>GLA slightly improved level playing field</td>
<td>30%</td>
<td>21%</td>
<td>15%</td>
<td>52%</td>
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  “This Review recognises the importance of the intelligence gathering activities of the GLA in exercising its enforcement function. However, it also concludes that licensing is an important function of the GLA in the sectors it covers, providing a level playing field to suppliers and labour users, where all parties can be assured that the suppliers are meeting the required compliance standards.” P. 11
  “The Review confirms the value of a mandatory licensing scheme for all businesses in the sector to provide a consistent and transparent landscape and supports the need to strongly tackle the minority of operators who wilfully break the rules, in the most targeted way. Therefore, the Review concludes that the role of GLA is important and that the functions of licensing and enforcement remain necessary.” P. 11

  “As such the GLA has achieved gains, through its licensing and inspection regime, in oversight and compliance – in fact the introduction of such a regime means that such employment protections that exist are more likely to be upheld because of such oversight even where it is not so directed (Scott 2008; Wynn 2009). The GLA has also raised the profile, and awareness of, labour exploitation in sectors it covers.” P. 179
Wilkinson, 2010, New Labour, the Gangmasters Licensing Authority and the woefully inadequate protection of migrant workers in the UK. “our research found that the GLA and its licensing regime were considered highly effective by labour providers, unions, retailers and representatives of vulnerable workers, for its significant work in improving working conditions for migrant workers and at the same time, creating a more level playing field for employers.” P.12

Oxfam, 2009, Turning the Tide, How to best protect workers employed by gangmasters, five years after Morecambe Bay “Nearly two thirds of gangmasters surveyed felt the GLA had had a positive effect on reducing worker exploitation and business fraud and had reduced the number of unlicensed gangmasters. This therefore creates a positive cycle, in which licensed gangmasters have an incentive to report illegal gangmasters who seek to undercut those who guarantee their workers basic legal rights” P. 12-13
“the GLA’s licensing system partly relieves retailers of the burden of investigating their suppliers” p. 13
“It is instructive to compare EAS with the GLA. This research has shown that the licensing model of enforcement, as employed by the GLA, has driven up standards for the majority of workers. Gangmasters, unions, and migrant support organisations alike are all supportive of the GLA’s work. In contrast to EAS, the GLA has the support of gangmasters in its ability to create a more level playing field, and has promoted self-regulation. Furthermore, the GLA has assisted in recovering more than £2 million in revenue for the Exchequer, as agencies are brought into the formal sector, make good arrears in tax and national insurance, and start fulfilling their obligations.” P. 27

Better Regulation Executive, 2009, Gangmasters Licensing Authority: A Hampton Implementation Review Report “The use of a licensing system could have led to “gold plating” of the law underpinning the standards, but generally speaking the GLA has done well in keeping additional regulatory burdens to a minimum” P.18

GLA 2nd Year Annual Review 2008, Executive Summary, p7 ‘We conclude: that licensing has been an appropriate tool to regulate labour providers; that agency workers are now better placed because of government regulation; and that the GLA is an effective and efficient regulator.’ P.7

Scott et al., 2007, Gangmasters Licensing Authority Annual Review
'According to labour providers, one of the main impacts of GLA licensing has been the formalisation of what were once informal labour supply systems. As a result of this, the labour users we spoke to felt that there had been a decline in the number of small field-gangs, a withdrawal of some unscrupulous operators from the GLA sectors’

Director – Grower/ Packer: “The gangmasters licensing definitely gave it a structure. We now know exactly what we’re looking for, we read the contracts of the gangmasters and it has been laid out who is responsible for health and safety, training, hygiene, toilets and bits and pieces that we weren’t strictly doing before.” P. 47


“The advantage of a compulsory licensing system is that it allows for a pre-screening of the applicants’ capabilities and professional experience in job placement activities. A licensing system also helps to create transparency by identifying those participating in the market and the overall activities of PrEA (Private Employment Agency), e.g. the number of jobseekers placed. A licence is used mainly as a means of improving the functioning of the labour market, not as a means to restrain competition.” P.14

“If a licensing system for the operation of PrEA is installed, a register of all licensed PrEA can be made public. Such a public register (with information on licensed agencies, their addresses and possibly the expiration date of the licence) ensures that anyone can verify whether the PrEA they wish to consult is actually legitimate. Illegally operating PrEA can be much more easily identified if it is known which agencies are licensed or not. Such a high degree of transparency would be advisable, especially in national labour markets where numerous PrEA are active.” P. 15


“As a voluntary scheme, the TLWG had a number of disadvantages:

- Ability to interact with only those businesses coming forward voluntarily for registration and auditing. These volunteers tended to be those LPs who were within the first tier of the supply chain with better businesses.
- With no access to information held by government departments such as the Health and Safety Executive, the Department of Work and Pensions, the Immigration and Nationality Directorate, HM Revenue & Customs and police forces, and no rights of entry or search, TLWG
auditors were less able to uncover criminal activities and other wrongdoing or pursue serious allegations of abuse.

- GLA Inspectors and Enforcement Officers will have statutory powers and access to Other Government Department checks and a database of information. This should ensure that the statutory scheme is better able to root out the most serious issues.” P.37

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

- As set out above FLEX believes that the current licensing regime is effective. FLEX believes that the removal of licence standard 7.2 ‘Right to Work’ would mean that the GLA could make greater inroads in gaining the trust of vulnerable workers, as it would truly be seen as independent of immigration enforcement. Further it would ensure that the GLA can identify the worst forms of abuse in the labour market.

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

- This would be the end of licensing which we would not want to see for the reasons set out above.

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

☐ Yes
☒ No
☐ Not sure

Please give your reasons

- In 2013 the forestry sector and apprenticeships were removed from the remit of the GLA. The sectors in which it operates were chosen for a reason, linking farm to plate along the supply chains of UK businesses, if its current remit were reduced yet further the organisation would be viewed as extremely limited in its scope.
- The US Trafficking in Persons Report, 2015 said that the UK should ensure increased investigations in high-risk labour sectors by: “expanding
the jurisdiction of and increasing funds for the Gangmasters Licensing Authority” (2015, 350) – organisations including, Oxfam, the Centre for Social Justice, and the Migration Advisory Committee have all called for the GLA to have an expanded remit, alongside extra resources to match.

**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

- As set out above, if the Director is setting the Strategic Direction for the GLA, this could threaten existing work of the GLA.
- FLEX believes that current oversight should be maintained.

**BIS/15/549**