



Department for Business, Innovation & Skills

# Tackling exploitation in the labour market consultation response form

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The closing date for this consultation is 07/12/2015.

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	Business representative organisation/trade body
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	Large business (over 250 staff)
<b>X</b>	Legal representative
	Local Government
	Medium business (50 to 250 staff)
	Micro business (up to 9 staff)
	Small business (10 to 49 staff)
	Trade union or staff association
	Other (please describe)

## Introduction

The Immigration Law Practitioners' Association (ILPA) is a charity and a professional membership association the majority of whose members are barristers, solicitors and advocates practising in all aspects of immigration, asylum and nationality law. Academics, non-governmental organisations and individuals with an interest in the law are also members. Established over 25 years ago, ILPA exists to promote and improve advice and representation in immigration, asylum and nationality law through an extensive programme of training and disseminating information and by providing evidence-based research and opinion. ILPA is represented on numerous government committees, including Home Office and other consultative and advisory groups.

ILPA has provided evidence to parliament and government on exploitation and trafficking, including submissions to the Joint Committee on Human Rights, the Home Affairs Committee and to inform parliamentary debates on successive immigration legislation<sup>1</sup>. ILPA's interest and expertise in this topic is in the exploitation of persons under immigration control or exercising rights of free movement in the UK. Our response to this consultation document therefore focuses on those areas where the proposed measures to tackle labour exploitation affect such persons.

## The case for more effective enforcement

- Do you agree that more needs to be done to tackle organised labour market exploitation?
  - Yes
  - No
  - Not sure

<sup>1</sup> See <http://www.ilpa.org.uk/pages/briefings.html>

Please give your reasons

Article 4 of the European Convention on Human Rights, prohibiting slavery, servitude, compulsory or forced labour, and trafficking for these purposes, places clear legal obligations upon States to investigate breaches of Article 4, to protect victims of such breaches and to punish perpetrators<sup>2</sup>. As a signatory to the Council of Europe Convention on Action Against Human Trafficking, the UK is also required to take active measures to prevent trafficking in human beings, to protect and promote the rights of victims, to investigate and prosecute offences of trafficking and to guarantee compensation to victims of trafficking<sup>3</sup>.

In the UK, across a spectrum of breaches of employment regulations, forced labour, servitude, slavery and trafficking there continue to be few prosecutions of perpetrators and limited identification and protection of those exploited.

The consultation acknowledges that migrants are particularly vulnerable to labour exploitation however it fails to address the structural factors that contribute to their vulnerability to such exploitation and the difficulties they face in leaving abusive or exploitative employment.

The consultation document does not describe or seek views on one aspect of the context of the proposals: the creation in the Immigration Bill 2015 of a new criminal offence of illegal working<sup>4</sup> targeted at persons subject to immigration control who are working where they have not been granted leave to enter or remain in the UK and whose earnings may be seized under the new provisions. Making it a specific offence to work without leave risks driving the exploited and enslaved further underground, undermining the aims of tackling exploitation in the labour market and protecting those exploited.

It is currently a criminal offence, under section 24 of the Immigration Act 1971, to enter the UK without leave when leave is required, to overstay or to breach a condition of leave (such as working when work is prohibited). Fear of the consequences of being identified with an irregular immigration status is already an obstacle to seeking protection from labour exploitation, as identified by the Special Rapporteur on the Human Rights of Migrants:

*57. The fact that a migrant is in an irregular situation does not deprive him/her of human rights protection. The human rights treaties, including the eight ILO Fundamental Conventions, apply to everyone, without discrimination. However, irregular migrants are frequently victims of labour exploitation. Due to their precarious situation, they often accept working for lower wages than regular migrants and nationals, and in dirty, difficult and dangerous conditions. Additionally, they regularly have difficult access to social services and health care, and live in constant fear of being detected, arrested, detained and*

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<sup>2</sup> *Siliadin v France* (2006) 43 EHRR 16, paragraphs 117 to 122; *Rantsev v Cyprus and Russia* (2010) 51 EHRR 1 (paragraphs 285 to 288)

<sup>3</sup> [http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Convntn/CETS197\\_en.asp#P130\\_7659](http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Convntn/CETS197_en.asp#P130_7659)

<sup>4</sup> Clause 8, HL Bill 79 2015-16.

*deported, if they seek to improve their working conditions. Fear of drawing attention to their immigration status thus prevents many irregular migrants from organizing and from seeking protection from the authorities for their rights as workers, including in case of non-payment or late payment of their salaries, or implementation of health and safety regulations*<sup>5</sup>.

ILPA has highlighted in particular that for overseas domestic workers, granted permission to accompany their employer to the UK and continue work in their employer's household on a temporary basis, the prospect of having to leave the UK is a major disincentive to reporting violence and abuse at the hands of their employers<sup>6</sup>. Following a change to the Immigration Rules on 06 April 2012<sup>7</sup>, overseas domestic workers were only granted leave for six months and were prohibited from changing employer. The possibility of changing employer and a route to settlement allows a worker to have a potential route out of abuse and exploitation, while still having a job and retaining a legal immigration status. Following changes as a result of debates during the passage of the Bill that became the Modern Slavery Act 2015<sup>8</sup>, overseas domestic workers who have been recognized as trafficked may have leave extended for up to six months<sup>9</sup>, but leave may be given in increments of less than six months. The worker has no recourse to public funds during this period and is permitted to work only as a domestic worker in a private household. The provisions provide little incentive to domestic workers to leave situations of abuse and risk their destitution when they fail to find gainful employment for such a short period.

The Director of Labour Market Enforcement should have specific responsibilities to review the way in which structural barriers, including immigration rules and legislation, undermine attempts to protect migrants in exploitative employment. The Director should not be limited in his/her focus to workers who have legal immigration status in the UK, as indicated by the Minister for Immigration during Public Bill Committee debates in the House of Commons on the Immigration Bill<sup>10</sup>. Such a limitation would mean that s/he would be restricted from considering the situations of, and measures affecting, those most vulnerable to labour exploitation and from developing measures that facilitate leaving exploitative situations, restitution and recovery. For example, whilst trafficked persons have a right to compensation irrespective of their immigration status, there are obstacles to securing remedies in practice. It is unclear whether Her Majesty's Revenue and

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<sup>5</sup> Report of the Special Rapporteur on the human rights of migrants, François Crépeau, *Labour exploitation of migrants*, A/HRC/26/35, 03 April 2014 at:

<http://www.ohchr.org/Documents/Issues/SRMigrants/A.HRC.26.35.pdf>

<sup>6</sup> See, for example, ILPA's response to the UK Border Agency Consultation *Employment Related Settlement, tier 5 and Overseas Domestic Workers*, September 2011, available at <http://www.ilpa.org.uk/pages/non-parliamentary-briefings-submissions-and-responses.html> and ILPA's briefings for debates on the Bill which became the Immigration Act 2014, available at <http://www.ilpa.org.uk/pages/immigration-bill-2013.html>

<sup>7</sup> Statement of Changes in Immigration Rules HC 1888.

<sup>8</sup> Section 53(3) Modern Slavery Act 2015: *Immigration rules may specify a maximum period for which a person may have leave to remain in the United Kingdom by virtue of subsection (1)* given effect by Statement of Changes in Immigration Rules HC 1025, published 26 February 2015.

<sup>9</sup> Immigration Rules HC 395, paragraphs 159 to 159EB.

<sup>10</sup> House of Commons Public Bill Committee, 1st sitting: 20 October, 2015, col 184, <http://www.publications.parliament.uk/pa/cm201516/cmpublic/immigration/151027/am/151027s01.htm>

Customs has undertaken enforcement action to secure reimbursement of the national minimum wage for victims of trafficking for labour exploitation. Further, there is no legal aid for the enforcement of county court or employment tribunal judgments, which restricts access to the courts for workers who have been subjected to labour exploitation bringing civil claims for compensation against their employers. The Director of Labour Market Enforcement must be able to consider these matters and their impact on the continuation of exploitative labour market practices at a strategic level.

## 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

ILPA supports the establishment of a body able to promote a coordinated and comprehensive response to tackling labour exploitation. In 2007, the Trades Union Congress' Commission on Vulnerable Employment produced a report *Hard work; hidden lives*<sup>11</sup> which proposed a “Fair Employment Commission” with “an advisory role at the highest level of government” which would have “*permanent responsibility for promoting cross-government awareness of the problem of vulnerable employment, and taking strategic action to ensure a coordinated and comprehensive response.*” However the proposed Director for Labour Market Enforcement does not reflect the protective function envisaged by the Trades Union Congress in either its scope or remit.

The role of the proposed Director is currently ambiguous, giving rise to the risk that the Director's protective functions with regard to employment rights become entangled with immigration enforcement activities. Debates on the Immigration Bill during its consideration by the House of Commons' Public Bill Committee suggest that the focus of the Director of Labour Market Enforcement will be on enforcement of prohibitions on working rather than on the prevention of exploitation<sup>12</sup>. By contrast, the Gangmasters Licensing Authority specifically identifies the prevention of worker exploitation and the protection of vulnerable people as aims within its

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<sup>11</sup> Available at [http://www.vulnerableworkers.org.uk/files/CoVE\\_full\\_report.pdf](http://www.vulnerableworkers.org.uk/files/CoVE_full_report.pdf) (accessed 20 September 2015)

<sup>12</sup> Committee Debate: 1st sitting: House of Commons 20 October, 2015, Hansard, <http://www.publications.parliament.uk/pa/cm201516/cmpublic/immigration/151027/am/151027s01.htm>

mission statement<sup>13</sup>. ILPA considers that the primary purpose of the Director for Labour Market Enforcement should be identified explicitly as being to enforce the rights of workers and protecting people from being exploited for their labour.

Where those working or living in very poor conditions are deterred from accessing assistance because of their immigration status or because of their vulnerability to threats by employers based on their immigration status, agencies will be restricted in their ability to gather the intelligence needed to exercise their regulatory functions and to protect against labour market exploitation. A lack of clarity over the protective function of the labour market enforcement agency may therefore undermine its ability to fulfil its other aims.

Under the Immigration Bill<sup>14</sup>, the remit of the Director of Labour Market Enforcement covers the Gangmasters Licensing Authority, the Employment Agency Standards Inspectorate and the National Minimum Wage Commission but does not extend to the Health and Safety Executive or local authorities with their statutory responsibilities for the enforcement of health and safety legislation (mainly in the distribution, retail, office, leisure and catering sectors) and for the rights of children at work. Such a wider remit was envisaged in the original Trade Union Congress proposal for a commission on vulnerable employment<sup>15</sup>. Professor Sir David Metcalf, giving oral evidence to the Public Bill Committee, suggested that in time the remit of the Director could be broadened<sup>16</sup>. Amendments to this effect were debated at Committee stage<sup>17</sup>. The Minister did not envisage a broadening of the remit of the Director of Labour Market Enforcement, but did envisage joint working<sup>18</sup>.

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

See response to Question 1 above. The Director of Labour Market Enforcement should have specific responsibilities to review the way in which structural barriers, including immigration rules and legislation undermine attempts to protect persons under immigration control from exploitative employment or conditions of employment. The role of the Director should encompass the protection of all workers from labour exploitation, without discrimination, and should address the difficulties that workers without a secure immigration status who are subject to labour market exploitation face in enforcing their rights to remedies.

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<sup>13</sup> <http://www.gla.gov.uk/Who-We-Are/Mission-Statement/>

<sup>14</sup> HL Bill 79, Clause 3.

<sup>15</sup> *Op.cit.*

<sup>16</sup> Immigration Bill, Public Bill Committee, 20 October 2015, c 19.

<sup>17</sup> *Ibid.*, col 168ff.

<sup>18</sup> *Ibid.*, Rt Hon James Brokenshire MP, col 181.

## **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

Whilst ILPA supports the principle of ensuring that effective penalties exist for employers who breach labour law, it is uncertain that the proposed new offence will achieve this aim. Any offence must be expressed with sufficient clarity to support effective prosecutions. The proposed offence does not appear clearly expressed and may overlap with existing offences under the Modern Slavery Act 2015. An alternative approach would be to increase the penalties and sentencing powers available for existing labour law offences and identify aggravating factors such as the repeat nature of the offence within sentencing guidelines.

**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

Not answered. This is outside ILPA's specialist expertise.

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

Not answered. This is outside ILPA's specialist expertise

**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?**

Not answered. This is outside ILPA's specialist expertise

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

Not answered. This is outside ILPA's specialist expertise.

## 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

We are unable to tick one of these boxes, but not because we are not sure. See below.

### Please give your reasons

The Director for Labour Market Enforcement may appropriately receive information and intelligence from labour market enforcement bodies to develop a picture of the nature, extent and impacts of exploitation in the labour market. The Director must, however, be adequately resourced to analyze the intelligence received so that it can be used to inform proactive intelligence-based operations to tackle abuse in employment.

The consultation document states that the Director will gather available data from labour market enforcement bodies and other sources including voluntary sector bodies. While the voluntary sector may wish to provide intelligence to the Director of Labour Market Enforcement, the powers of the Director should not extend to compelling disclosure of information held by voluntary sector organisations. Persons who have been or are being exploited who fear getting in touch with the authorities may approach voluntary sector organisations for assistance in the first instance, but would be deterred from doing so and from receiving help from such organisations where there was a risk of their confidentiality being breached.

The Minister for Security and Immigration indicated during consideration of the Immigration Bill 2015 before the Public Bill Committee in the House of Commons that:



*[I]f 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.<sup>19</sup>*

Forwarding intelligence on individual cases to the immigration authorities would undermine the role of the Director for Labour Market Enforcement and its partner agencies tasked with preventing labour exploitation. Persons will not bring themselves to the attention of these agencies or seek their help where they fear that coming forward will place them at risk of immigration enforcement action and potential prosecution. This will lead to persons under immigration control remaining in harmful and abusive situations and prevent labour market enforcement agencies from receiving the intelligence required to co-ordinate an effective response to tackling labour 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**

No box ticked for the reasons given below.

### **Please give your reasons**

ILPA supports the expansion of the remit of the Gangmasters Licensing Authority to cover further sectors. Regulation and inspections form an important element of ensuring compliance and where sectors are not subject to a regulatory and inspection regime, exploitative labour providers may move into these industries instead, displacing the problem of labour exploitation. The US State Department Trafficking in Persons Report 2015 has recommended that the jurisdiction of the Gangmasters Licensing Authority be extended, recognising concerns raised that it did not have jurisdiction to inspect sectors such as construction, cleaning, hospitality, and the care sector<sup>20</sup>.

Consideration should also be given to the inspection of domestic settings where work is undertaken, as recommended by the UN Special Rapporteur on the Human Rights of Migrants:

*63. In relation to domestic workers, labour inspections are particularly challenging, as private households are usually off-limits for the inspectors and domestic workers are highly vulnerable to abuse and exploitation. The Special Rapporteur believes labour inspections inside private households, as well as*

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<sup>19</sup> Public Bill Committee: 1st sitting: House of Commons 20 October, 2015, , column 166, <http://www.publications.parliament.uk/pa/cm201516/cmpublic/immigration/151027/am/151027s01.htm>

<sup>20</sup> US State Department, *Trafficking in Persons Report 2015, Country Narratives: United Kingdom*, <http://www.state.gov/documents/organization/243562.pdf>

*regular meetings between domestic workers and a labour inspector outside the household, would be important to combat the too-frequent abuse of domestic workers: privacy is as important for the domestic worker as it is important for her employer<sup>21</sup>.*

This would facilitate the enforcement of labour standards in this sector without the reliance on individuals placing themselves at risk by making or being suspected of making a complaint. Such inspections are being carried out in Ireland by the National Employment Rights Agency<sup>22</sup>.

Any expansion of the remit of the Gangmasters Licensing Authority must, however, be accompanied by sufficient resources to enable the authority to undertake its activities effectively. The US State Department Trafficking in Persons Report 2015 has already recorded concerns that funding and staffing for the Gangmasters Licensing Authority had decreased and recommended that the UK Government increase funds for this agency<sup>23</sup>.

## 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

Please refer to our comments at Question 2 above. There is an ambiguity in the role of the Director of Labour Market Enforcement which would be in conflict with the mission of the Gangmasters Licensing Authority to protect vulnerable and exploited workers. The mission of the Gangmasters Licensing Authority should continue to be to prevent, detect and investigate worker exploitation but it is not clear within the consultation document and draft legislation establishing the Director that the Director's annual plan would be able to support the exercise of these functions for the purpose of protecting those vulnerable to labour market exploitation.

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<sup>21</sup> Report of the Special Rapporteur on the human rights of migrants, François Crépeau, *Labour exploitation of migrants*, A/HRC/26/35, 03 April 2014 at: <http://www.ohchr.org/Documents/Issues/SRMigrants/A.HRC.26.35.pdf>

<sup>22</sup> See National Employment Rights Authority (NERA) to begin a targeted campaign of inspections of private (accessed 5 December 2015).

<sup>23</sup> US State Department, *Trafficking in Persons Report 2015, Country Narratives: United Kingdom*, <http://www.state.gov/documents/organization/243562.pdf>

**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**

Not answered.

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

- Yes  
 No  
 Not sure

**Please give your reasons**

Not answered.

**14. What other tasks might the new Authority perform?**

See comments above. The Gangmasters Licensing Authority is already under-resourced for its necessary licensing and inspection functions and these activities should be maintained.

## **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

We are not able to tick one of these boxes, not because we are not sure, but for the reasons given below.

**Please give your reasons**

The Gangmasters Licensing Authority is currently empowered to investigate criminal offences relating to licensing in the sectors that it regulates. It is proposed that these powers be increased to enable the Gangmasters Licensing Authority to investigate and prosecute other criminal conduct with respect to employment practices that it identifies in the course of its operations. The consultation document states that the proposals are modelled on the investigative powers exercised by Her Majesty's Revenue and Customs and Immigration Enforcement.

ILPA has long been critical of the extensive nature of the powers of search and arrest afforded to immigration officers. The excessive powers available to immigration officers has led to their being used inappropriately in the immigration context and in situations outside their original purpose<sup>24</sup>. There is a risk that intrusive or inappropriate use of powers of search and arrest lead to breaches of human rights.

The consultation document makes the case for extending the powers of the Gangmasters Licensing Authority so that is able to both prosecute breaches of employment legislation and to take immediate action to secure evidence, arrest suspects and rescue persons where it finds evidence of potential exploitation in the labour market without having to wait for other law enforcement agencies to and act.

It would be appropriate to enable the authority to use provisions under the Proceeds of Crime Act 2002 for cash forfeiture and confiscation to remove assets from employers who commit offences against employees. This is an important means of securing the assets then available for workers who are victims of labour market abuses to secure unpaid wages and compensation as a remedy promoting restitution and rehabilitation for workers who have been subjected to labour exploitation.

There is not, however, a similar justification for the proposed extension of the authority's powers to investigate evidence of the most serious abuses of workers: slavery, servitude, forced or compulsory labour or human trafficking. The investigation of such serious offences is properly be conducted by the police and/or the National Crime Agency as the consultation document recognises. The powers proposed for the Gangmasters Licensing authority should therefore be more restrictively delineated.

It is important that the remit and powers of the Gangmasters Licensing Authority are not expanded simply to cover deficiencies in responses by other law enforcement agencies. Labour exploitation will be tackled more effectively through partnership working between the Gangmasters Licensing Authority and the police, with a clear delineation of roles and responsibilities.

The proposed extension of the investigatory powers of the Gangmasters Licensing Authority to sectors outside those it will license may lead to confusion as to where

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<sup>24</sup> See ILPA's briefings for Part 3 of the Immigration Bill 2015 at <http://www.ilpa.org.uk/resources.php/31490/ilpa-drafting-group-briefing-for-house-of-commons-committee-stage-of-the-immigration-bill-part-3-enf> and briefings for debates on Part 1 of the Bill that became the Immigration Act 2014, available at <http://www.ilpa.org.uk/pages/immigration-bill-2013.html> .

the duty to investigate suspected exploitation in any particular case lies. This may give rise to uncertainty both for workers and referring agencies and potentially also for the two law enforcement agencies themselves with the risk that no agency will take the action required.

ILPA opposed the introduction of Slavery and Trafficking Prevention Orders under the Modern Slavery Act 2015 on account of the sweeping restrictions these place on a person's civil liberties<sup>25</sup>. Individuals' free movement is the primary target; permissible restrictions include a ban on all foreign travel for periods of up to five years, which can be extended indefinitely. The scope of the potential Orders is vague: a person is to be prevented from doing anything which a court is satisfied is 'necessary for the purpose of protecting others from physical or psychological harm' in relation to a trafficking / human slavery offence. These Orders can be imposed on persons who have never been convicted of any crime, yet a breach of any of the conditions of an Order result in a penalty of five years' imprisonment. The Gangmasters Licensing Authority would have alternative powers at its disposal for taking action to prevent harm where it identifies risk of exploitation and should not be given further powers to apply for these orders.

There should also be caution in expanding the role of the Gangmasters Licensing Authority beyond its principal focus on inspections and licensing activity to enforce compliance with employment legislation. Labour inspections play an important role in the prevention of labour exploitation:

*62. Labour inspections are an important tool to combat human rights violations committed against migrants in the workplace and can, if undertaken properly, prevent such violations from occurring<sup>26</sup>.*

Resources from this necessary preventative work should not be diverted into criminal enforcement activities that would be better undertaken by the police and specialist agencies.

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

Please see Question 15 above. The proposed extension of the investigatory powers of the Gangmasters Licensing Authority to sectors outside those it will license may lead to confusion as to where the duty to investigate suspected

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<sup>25</sup> See our briefings at <http://www.ilpa.org.uk/pages/briefings-on-the-modern-slavery-bill-2014.html>

<sup>26</sup> Report of the Special Rapporteur on the human rights of migrants, François Crépeau, *Labour exploitation of migrants*, A/HRC/26/35, 03 April 2014 at: <http://www.ohchr.org/Documents/Issues/SRMigrants/A.HRC.26.35.pdf>

exploitation in any particular case will lie, giving rise to uncertainty for workers, for referral agencies and potentially for the law enforcement agencies themselves with the risk that no agency will take the action required.

**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.

See comments below

**Please give your reasons**

Please refer to our response to Question 15 above. The powers of the Gangmasters Licensing Authority should be restrictively defined and limited to the prosecution of breaches of employment regulations and the taking of immediate action to secure evidence, arrest suspects and rescue workers before referring to the police and specialist crime agencies for the investigation and prosecution of offences of exploitation and trafficking.

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

Not answered.

**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**

See our response to Question 15 above. In the context of prosecuting breaches of employment regulations and taking immediate action to secure evidence and arrest suspects, it would be appropriate for the authority to use Proceeds of Crime Act powers to recover criminal assets. This is an important means of securing the assets available for workers who have been subjected to labour market abuses to secure unpaid wages and compensation as an important remedy promoting restitution and rehabilitation for victims of labour exploitation.

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

ILPA does not support the suggestion that the Gangmasters Licensing Authority would formally request assistance from Immigration Enforcement with a view to conducting joint operations. This conflates immigration control with the enforcement of labour market regulations and the protection of workers from exploitation undermining the latter. As stated above, fear of repercussions related to irregular immigration status is a significant obstacle in persons leaving abusive situations and the association of the Gangmasters Licensing Authority with Immigration Enforcement Officers would deter some workers from approaching the authority for assistance. The UN Special Rapporteur on the Human Rights of Migrants has stated:

*62. Labour inspections are an important tool to combat human rights violations committed against migrants in the workplace and can, if undertaken properly, prevent such violations from occurring. However, the criminalization of irregular entry and stay and the emphasis on immigration control has in some countries led to cooperation between labour inspection and immigration enforcement and/or imposition of immigration control duties on labour inspectors. The result impedes effective protection of all migrants under labour law, and also intimidates migrants from denouncing abusive working conditions and from cooperating with labour authorities. A migrant who is either irregular and fears detection and deportation, or who has a precarious legal status and fears losing his/her job and subsequently becoming irregular, will be very reluctant to report workplace violations to labour inspectors, unless there is a "firewall" in place*

*which prevents labour inspectors from communicating information about potentially irregular migrants to immigration enforcement*<sup>27</sup>.

The International Labour Office Labour Inspection Convention 1947 (No.81), which the UK ratified in 1949, states that the function of labour inspection is to secure the enforcement of the legal provisions relating to conditions of work and the protection of workers, to provide information and advice to employers and employees on complying with the provisions and highlighting abuses not covered in law<sup>28</sup>. The Convention further states that any additional duties should not prejudice in any way the authority and impartiality which are necessary to inspectors in their relations with employers and workers<sup>29</sup>.

The International Labour Office Committee of Experts on the Application of Conventions and Recommendations, the body responsible for examining States' adherence to international labour standards, has stated that the primary duty of labour inspectors is to protect workers and not to enforce immigration law<sup>30</sup> and that the objectives of labour inspection can only be met if the workers covered are convinced that the primary task of the inspectorate is to enforce the legal provisions relating to conditions of work and protection of workers<sup>31</sup>.

## **21. Which organisations should this new power apply to?**

The power should apply to statutory agencies with responsibility for promoting and enforcing labour market standards and exercised for the purpose of protecting the rights of the worker and preventing exploitation. Immigration Enforcement should be excluded from the scope of the proposed new power for the reasons indicated above.

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

- Yes
- No
- Not sure

See specific answer below.

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<sup>27</sup> Report of the Special Rapporteur on the human rights of migrants, François Crépeau, *Labour exploitation of migrants*, A/HRC/26/35, 03 April 2014 at:

<http://www.ohchr.org/Documents/Issues/SRMigrants/A.HRC.26.35.pdf>

<sup>28</sup> Article 3(1), International Labour Office Labour Inspection Convention 1947 (No.81), [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312226](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312226)

<sup>29</sup> Article 3(2), *ibid*

<sup>30</sup> International Labour Office Committee of Experts on the Application of Conventions and Recommendations (CEACR), *General Labour Survey: Labour Exploitation*, 2006,

<http://www.ilo.org/public/english/standards/relm/ilc/ilc95/pdf/rep-iii-1b.pdf>

<sup>31</sup> *Ibid*



**Please give your reasons**

Immigration Enforcement should not be given the 'right to ask' the new Authority to offer operational support for the reasons outlined above.

## **Licensing**

ILPA does not take a view on this section and has not responded to the questions. (Questions 23-26)

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

- Yes
- No
- Not sure

**Please give your reasons**

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

**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**

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

- Yes
- No
- Not sure

**Please give your reasons**

## 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**

The current ambiguity in the role of the Director of Labour Market Enforcement, discussed above, places it in conflict with the mission of the Gangmasters Licensing Authority to protect vulnerable and exploited workers. The mission of the Gangmasters Licensing Authority should be to prevent, detect and investigate the exploitation of workers but it is not clear within the consultation proposals or the proposed legislation whether the Director of Labour Market Enforcement would also exercise its functions to exploited workers or would conflict with this aim.

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