



Nottingham Trent  
University

# **Expand, Resource and Enforce**

**Recommendations for the development and remit of a  
Single Enforcement Body**

**Prepared for the TUC by the Work, Informalisation, and  
Place Research Centre at NTU**

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**August 2024**

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This report has been commissioned by the TUC to support the development of the Single Enforcement Body in the UK. This work has been conducted by the Work Informalisation and Place Research Centre at Nottingham Trent University. Views expressed here are those of the authors and do not represent TUC policy.

### **The Work Informalisation and Place Research Centre**

The Work, Informalisation and Place Research Centre provides methodologically innovative interdisciplinary studies with a specific focus upon the spatial dimensions of contemporary work and employment in sectors such as hand car washes, nail bars, and small-scale garment manufacturing. Work in these sectors tends towards casualisation and informalisation where workers operate under business models that embed patterns of labour market exploitation. Exploitation includes wage theft, under payment of the national minimum wage through to modern slavery where employer coercion centres on work for favours, labour bondage and tied labour in unsafe workplaces.

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This report has been designed and typeset by  Nottingham Civic Exchange

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## Glossary

<b>EAI</b>	The Employment Agency Inspectorate (EAI) of the Department for the Economy (DfE) <sup>1</sup>
<b>EAS</b>	The Employment Agency Standards Inspectorate
<b>Fair Work Agency</b>	Although recent press coverage has referred to the “Fair Work Agency” throughout this paper we continue to refer to the proposed organisation as SEB, until such time as a new organisation is created
<b>GLA</b>	References to GLA refer to the Gangmasters Licensing Authority as it existed prior to 2016
<b>GLAA</b>	The Gangmasters and Labour Abuse Authority post 2016
<b>HMRC NMW</b>	His Majesty’s Revenue and Customs National Minimum Wage Team
<b>HSE</b>	Health and Safety Executive
<b>LMEO</b>	Labour Market Enforcement Order
<b>LMEU</b>	Labour Market Enforcement Undertaking
<b>NCA</b>	National Crime Agency
<b>ODLME</b>	Office of the Director of Labour Market Enforcement
<b>PACE</b>	Police and Criminal Evidence Act 1984
<b>SEB</b>	the Single Enforcement Body
<b>STPO</b>	Slavery and Trafficking Prevention Order
<b>STRO</b>	Slavery and Trafficking Risk Order
<b>SWS</b>	Seasonal Worker Scheme

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<sup>1</sup> EAI is responsible for the regulation of the private recruitment sector which is based in Northern Ireland. It is not able to consider matters relating to employment agencies/businesses which are located in England, Scotland or Wales.

## Executive Summary

Tackling the exploitation of workers, providing a "level playing field" for compliant employers to grow economically, and enhancing livelihoods of workers, must be a key goal of any administration. Since 2005<sup>2</sup> there has been a drive towards reducing the regulatory burden on business. From 2015<sup>3</sup> there has been political debate about the best way to manage the enforcement of rules and regulations of work in the UK.

These two positions create a tension that, together with a fragmented regulation and enforcement patchwork, has allowed too many people to be exploited. The concept of a Single Enforcement Body (SEB) to bring together enforcement bodies is a key commitment of the new government. Accordingly, this paper sets out in the main body, and in technical appendix, the key issues that must be dealt with to create an effective and sustainable SEB.

The TUC commissioned NTU's Work, Informalisation and Place (WIP) Research Centre (Appendix 1) to review the enforcement landscape and make recommendations for the TUC and affiliated unions to discuss with those tasked with developing the SEB. This will ensure that trade union officials better understand the frailties of the current system to deliver improved levels of enforcement for workers and businesses across the UK.

The original consultation on the creation of a SEB concluded that the primary candidates for transfer to the body were the Employment Agency Standards (EAS) Inspectorate, Gangmasters and Labour Abuse Authority (GLAA), and the National Minimum Wages (NMW) team. Details of their existing functions are in Appendix 2. Details of the remits of these bodies, others operating in the labour market, and proposals for functions to be originally included in the SEB from the consultation, are reproduced in Appendix 3 and 4. This paper, as commissioned, considers only these three bodies as candidates for transfer into a SEB (NB: a small exception to this is proposed in Recommendation 2, para 8. and in the main report, involving small units with existing synergies). Future reviews may consider adding other responsibilities to improve enforcement of specific worker rights, for example the management of the Working Time Regulations, which may currently be enforced by other regulatory bodies.

The creation of a SEB must remove regulatory overlaps and provide a more cohesive approach to labour market enforcement. The current remits of the three bodies, across the spectrum of labour market enforcement, are set out below:

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<sup>2</sup> [Hampton Report: Reducing administrative burdens: effective inspection and enforcement](#)" (2005)

<sup>3</sup> Following the Modern Slavery Act 2015 the next Government was committed to a review of the role of the Gangmasters Licensing Authority ([section 55 of the 2015 Act](#)). The new Conservative Government under David Cameron committed to a review of the labour market, as announced in his May 2015 Immigration speech, into which the review of the GLA would be subsumed.

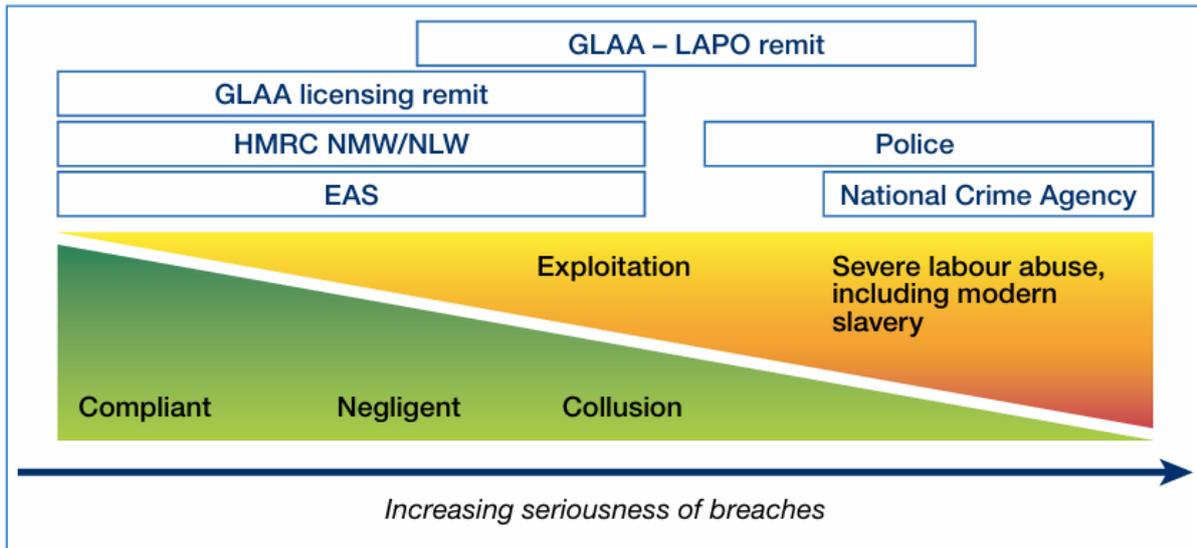


Fig 1. Representation of bodies and areas of responsibilities reproduced from the Director of Labour Market Enforcement's Strategy 2021-22

The SEB will incorporate those functions and powers of the three candidate bodies in figure 1 including the authority to investigate forced labour, although this is currently restricted to England and Wales. It will therefore have significant criminal investigation powers at its disposal. To provide a consistent service it needs to be able to use all its powers and be authorised to investigate all offences throughout the UK. An "as is" transfer of the three bodies would not provide this result; alignment throughout the UK, as proposed below is required.

A strategic policy decision at the heart of how a SEB might function is to clarify its status as an enforcement body, rather than simply as a regulator. Visible enforcement activity, enhancing powers, and aligning those powers across the UK, together with communication of enforcement outcomes, would have a powerful deterrent effect supporting the drive to compliance. The alternative is to allow lower-level offences to go unchallenged and risk these becoming normalised and embedded. Such complacency may also enable an environment where gradually more extreme labour market offences can occur, and ultimately provide the conditions for labour exploitation to flourish. Furthermore, an enforcement framework must not be created in a way that results in enforcement of worker rights being less effectively enforced in some parts of the UK than others.

Tackling labour market non-compliance comprehensively will prevent more extreme labour exploitation being carried out by rogue employers. We consider that the recommendations in this paper, should provide the right environment, and enablers, for the SEB to succeed when coupled with appropriate resources and structure to enhance labour market enforcement and worker protection.

## Key Recommendations

Below we summarise our 15 key recommendations. We consider that they are essential to support the development of a new and effective single enforcement body across the UK. These, and other supplementary recommendations, can also be found in Appendix 10. Each of the key recommendations has an accompanying brief explanation of it, along with links to the paragraphs in the report where further information can be found. Whilst we have provided a broad prioritisation for the TUC to consider, it is up to the TUC to decide which of these recommendations to take forward.

**Recommendation 1:** The new Single Enforcement Body (SEB) must move away from a light-touch regulatory model that has dominated the UK since 2005. To support this a review of the Regulators and Growth Duty Codes regulation must be undertaken to ensure it does not prevent a strong enforcement response determined by the SEB, enabling appropriate and proportionate protection of worker rights as a priority over better regulation.

***Regulation and Enforcement***- The SEB must be recognised as an enforcement body first, and regulator second. Whilst education and awareness will be key parts of its role, it must be capable of exercising a strong enforcement response. That response must not be prevented by existing Better Regulation Codes which can hinder compliance and protection of worker rights. Amendment of the Better Regulation Codes to address the tension with growth must be considered. (See paras. 28-37)

**Recommendation 2:** A comprehensive remit for the SEB must be UK wide, manage the protection of migrant workers under any immigration scheme, and therefore incorporate EAI NI and the SWS Compliance team.

***Constituent bodies***- Although the constituent parts of the SEB must primarily focus on transferring the functions of EAS, GLAA, and NMW into it, consideration must be given to the inclusion of the current Seasonal Workers Compliance team function in UK Visas and Immigration. This team examines the same areas of labour market rules for worker protection.

Thought must also be given to including the Employment Agencies Inspectorate in Northern Ireland, because it carries out the same function as EAS, and would ensure UK-wide coverage for the SEB. (see paras 8-9, 59-66, and 89)

**Recommendation 3:** Proposals to extend licensing in any industry sector must ensure they understand, and will apply, to all the employment models operating in an industry sector otherwise regulation will be partial.

***Licensing***- The need to extend licensing to additional parts of the economy where labour market abuses are occurring, must be regularly considered. However, any proposals to extend licensing must thoroughly consider the type of employment methods characterised by certain industry sectors, including direct employment, and determine whether alternative licensing frameworks may be required for such sectors. (see paras 38-54)

**Recommendation 4:** A general power of entry must be introduced that enables a SEB inspector to enter any premises and examine a business's operations covering all the functions of the candidate bodies.

***Powers of entry***- Each of the candidate bodies have civil powers of entry to discharge their enforcement functions. Entering a premises under one of those powers limits the inspector in what they can do. The SEB needs to be capable of entering premises under powers that cover all of its purposes. (see paras 55-58)

**Recommendation 5:** The SEB must be empowered to utilise all existing powers in all UK jurisdictions and coastal areas.

***Alignment of powers and sanctions throughout the UK***- Ensuring a UK-wide role must also ensure the SEB can operate consistently in exercising all its powers and sanctions. Currently, there is a jurisdictional "patchwork quilt". This must be aligned as follows:

- Authorise the SEB to investigate forced labour offences that exist in Northern Ireland and Scotland anti-trafficking legislation, in line with the continuation of that responsibility in England and Wales (as currently exercised by the GLAA)
- Include the authority to investigate maritime-related labour abuses in coastal waters, and offshore facilities
- As part of the alignment of powers relating to forced labour, align the SEB's ability to utilise, and apply for the equivalent Slavery and Trafficking Prevention and Risk Orders in the Northern Ireland and Scotland Acts
- As all three candidate bodies can use the Labour Market Enforcement Undertakings and Orders (LMEU/Os) sanctions regime, but to different degrees in the different parts of the UK, align their use. In doing so, it will enable the SEB to operate combined LMEU/Os, where appropriate, to cover non-compliances of all three bodies where identified (currently only the GLAA can do so and only in England and Wales) (see paras 67-97)

**Recommendation 6:** Consideration must be given to activating the sanctions that are already available in the Regulatory Enforcement and Sanctions Act 2008.

***Appropriate sanctions and guidance on their proportionate use***- If the SEB is to have "teeth" it must be able to sanction labour market offences in the labour market

proportionately. LMEU/Os and prosecution have their place in a spectrum of tools to tackle offences. But other sanctions, such as fines, may more proportionately deal with labour market offences in the “middle ground”. The SEB will need to produce a comprehensive enforcement policy setting out how, and in what circumstances, different types of sanction at its disposal, individually, or in combination, will be used. Open and transparent guidance on the use of all sanctions can act as a deterrent and avoid unnecessary challenges to sanction decisions that may be applied. (see paras 98-104)

**Recommendation 7:** Consideration must be given to empowering the SEB to be able to investigate job frauds under Fraud Act powers, or create a standalone offence, such as an Aggravated Labour Offence. Other labour market offences must also be brought within its remit.

**Authority to investigate other labour market related offences**-The Immigration Act 2016 defined offences classed as labour market offences when the GLAA’s remit was extended. There are other offences that could be added to this list, and new offences that must be considered to enable a flexible, future-proofed ability to tackle other methods of deception, such as online fraud. These enhancements will enable the SEB to utilise all of the investigative powers that currently the GLAA can operate, but in relation to a wider set of offences. (see paras 106-127)

**Recommendation 8.** A compensation scheme framework must be introduced to provide a consistent method of calculating appropriate compensation where it cannot be secured from the offenders. The scheme must apply to victims to whom reparation is appropriate but whose circumstances may not have led to a prosecution of the offender, for any reason, for modern slavery offences.

**“Access to remedy”- compensation**- Whilst modern slavery legislation enables the courts to award compensation payments in appropriate circumstances, not all cases of labour exploitation may have been considered suitable for prosecution under modern slavery legislation. Victims who have been exploited may not therefore be able to secure compensation. A scheme that addresses the “middle ground” of labour exploitation, where offenders cannot be held to provide reparation, would ensure that all victims can access appropriate compensation. (see paras 133-141)

**Recommendation 9:** An Executive Agency should be considered as the preferred operational model.

**Status of the body**- Consideration must be given to what type of body the SEB will be. If it is to be a Non-Departmental Public Body (NDPB) like the GLAA its staff will be classed as public servants, not civil servants. Existing civil servants in EAS and NMW

may not want to transfer to the SEB, and Cabinet Office rules allow consideration of redeployment for affected staff, who may wish to remain in their existing Departments. The same does not apply to GLAA transferring into the civil service; there would not be a body for staff to remain part of. Therefore, if the transfer of civil servants to a NDPB SEB was required it could have a significant adverse impact on the creation of the SEB and its operational readiness if less staff than the required staff compliment transferred. Conversely, an Executive Agency within Government may minimise this risk and retain current civil servants in posts that transfer within Government, as well as transfers of GLAA staff into the civil service. (see paras 144-149)

**Recommendation 10:** The Governance structure of the SEB must include TUC and Trade Union representation

***Representation and Governance structures*** - If the SEB becomes an Executive Agency, it would be straightforward to facilitate Labour's commitment to establish governance structures with union and TUC representation. (see paras 150-151)

**Recommendation 11:** The SEB must develop a training package applicable to all existing staff, and for new recruits, ensuring a thorough, tested, understanding of the legislation it will enforce.

***Training*** - Combining the three bodies will require priority consideration of the necessary training programme for all existing, and new staff. This needs to be comprehensive and monitored to test the application of knowledge appropriately. (see paras 161-163)

**Recommendation 12:** The SEB must have an independent, easily accessible website, enabling all stakeholders to find all the information they require on labour market enforcement in one place

***Online and web tools*** - Equally the SEB must have the correct tools at its disposal including IT infrastructure, and an independent website. Providing clear access to information is recognised as a benefit the GLAA currently can exercise. It will be crucial to the SEB's establishment, and support for business and workers, for this to continue. (see paras 164-170)

**Recommendation 13:** The SEB must be responsible for operational reporting and strategic decisions.

***Responsibility to Ministers*** - The amalgamation of the candidate bodies, currently under the oversight of the ODLME provides opportunity for streamlining of reporting to ministers. The SEB must have responsibility for all strategic decision-making and

reporting to Ministers. This will subsume the powers and responsibilities of the ODLME which will require legislative amendment. (see para 152)

**Recommendation 14:** The SEB must create operational working relationships and liaise with other bodies such as the European Labour Authority, IOM, ILO, and countries of recruitment to the UK. It should consider the implementation of labour attaches mirroring similar approaches by HMRC and NCA, which would also enable the SEB to meet Council of Europe recommendations.

***International Liaison*** - Migrant workers are particularly vulnerable to exploitation from their country of origin, in transit, and to their ultimate place of employment. Effectively countering these risks requires close cooperation with overseas authorities, where such collaboration assists investigation, as well as comparative studies and the development of global best practice. (See paras 171-179)

**Recommendation 15:** To enable the SEB to progress towards the ILO recommended staffing levels of inspector/worker ratio it will need further funding.<sup>4</sup> The new SEB should also be able to recover and retain appropriate enforcement costs.

***Resources*** - If any or all of the recommendations are adopted there will be a requirement for increased resources. This will be particularly the case if the scope of licensing is increased or the authority to investigate forced labour offences is aligned throughout the UK. The resource requirements of the SEB are likely to be greater than any economy of scale savings created through amalgamation, whilst recognising the need to seek operational improvements and efficiencies. The SEB must be fully costed and resourced to meet the requirements it will have beyond the existing staffing and budgets of the candidate bodies. This must include recovery of operational costs expended in enforcement action. (see para 158-160)

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<sup>4</sup> [ILO calls for strengthening labour inspection worldwide](#) - the ILO benchmark ratio is one inspector per 10000 workers. In the UK, it is recognised that the staff complement of HSE Inspectors, who will not be part of a SEB, would contribute to the UK's overall ratio of "labour inspectors" to workers.

# Introduction

1. This paper sets out how the UK has reached the current labour market enforcement landscape. It provides a single reference source to support the development of implementation options for the Single Enforcement Body (SEB) to act as an effective organisation to tackle labour exploitation across the UK. The idea of a SEB was subject to formal consultation under the previous administration but not taken forward in legislation. The 2024 Conservative Manifesto showed no further commitment to reinvigorating work on the creation of a SEB.<sup>5</sup> Conversely, it is a central pillar of the Labour Party's *Plan to Make Work Pay*.<sup>6</sup> Following its election victory, we expect it to remain an important policy for the Labour government to support workers and businesses across the UK. We expect that founding legislation will be included in the forthcoming Employment Rights Bill, announced in the King's Speech, to initiate this development.

2. This paper begins by considering whether the SEB should be a regulator or an enforcement body. We argue it must be defined and operate primarily as an enforcement body. This is important to determine how it will work, what teeth it needs, and which type of organisation we believe it must be, to be successful. The decision on this issue fundamentally affects whether other recommendations within this paper would be effective. The paper then summarises the legislative changes up to the current point, from which gaps can be seen. We then consider whether there should be changes to the licensing regime, powers of entry, alignment of powers throughout the UK, before considering other issues that may affect functions of the SEB, new sanctions, and issues on the potential structure and legal status of the SEB, including its role in the global labour market.

3. This paper has been prepared by Darryl Dixon, Senior Research Fellow, Rich Pickford, Manager of Nottingham Civic Exchange and Professor Ian Clark of the [Work, Informalisation and Place Futures Research Centre at NTU](#). Further information about the authors and their centre can be found in Appendix 1.

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<sup>5</sup>[The Conservative and Unionist Party Manifesto 2024](#), page 15

<sup>6</sup> "Labour's [Plan to Make Work Pay](#)".

## What is the purpose of the SEB: regulator or enforcement body?

4. The development of a SEB must remove regulatory overlaps and provide a more cohesive approach to labour market enforcement, manage the changing nature of work, and unify the approach and priorities of the three separate bodies. We consider this is essential to build a body that is fit to tackle changes in 21<sup>st</sup> century working practices, emerging trends in the gig economy that potentially enable new forms of non-compliance, online job frauds, and the risk that Artificial Intelligence may make such frauds more difficult to detect.

5. The Labour Party proposals to create a SEB appear designed to reverse the de-regulatory agenda that has developed since 2005 and create a single point of responsibility for labour market enforcement. Whilst the previous government had committed to creating a SEB it failed to deliver on its commitment.

6. The re-introduction of the proposal to create a SEB requires consideration of what type of body the SEB will be. In doing so, ministers and stakeholders need to decide whether they wish to create a new regulator, or an enforcement body better capable of protecting the employment rights for all workers irrespective of status. The current regulatory framework, under the oversight of the Better Regulation Executive<sup>7</sup> and the Regulatory Policy Committee<sup>8</sup> centres on light-touch measures, supported by codes of practice that regulators should adhere to in their enforcement policies. It is within these constraints that enforcement agencies shape their own enforcement priorities and approaches. Resolving the question of whether the SEB will be primarily a regulator or enforcement body is critical to the direction and development of the SEB and the future capability of its enforcement policies to deliver effective protections and controls.

7. There are therefore two pre-requisites to creating a policy environment in which a SEB can operate effectively, implement recommendations, and plug the gaps, set out in this paper. They are:

- All workers, irrespective of employment status, for example undocumented workers, must be covered by the remit of the SEB enforcement, to make labour market enforcement more cohesive and less light touch. Labour market enforcement bodies need to protect all vulnerable workers such as those who don't benefit from being unionised.
- Active enforcement rather than light-touch regulation must **not** be seen as heavy handed but rather as an effective component of decent work and active labour rights protection in the same way that alcohol licensing, event

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<sup>7</sup> [Better Regulation Executive \(BRE\) - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

<sup>8</sup> [Regulatory Policy Committee - GOV.UK \(www.gov.uk\)](http://www.gov.uk)

licensing, regulation of cigarette sales and advertising and buildings regulations are now seen.

## **The candidate bodies**

8. Based on our understanding of the proposed Single Enforcement Body we expect the Employment Agency Standards (EAS) inspectorate, National Minimum Wages (NMW) team and Gangmasters and Labour Abuse Authority (GLAA) to be the core organisations that form the Single Enforcement Body. It may be argued that other bodies, agencies and organisations operate within the labour market enforcement framework. For the purposes of the paper, we will assume that these three bodies are the only ones in the scope of the SEB. However, we provide a view on whether Employment Agency Inspectorate (EAI Northern Ireland) and the Seasonal Workers Scheme compliance unit should also transfer to the new body. We comment on this exceptionally because of the obvious regulatory overlaps with those bodies. An outline of the core candidate bodies is provided in the Appendix 3.

9. The TUC's position is that the Health and Safety Executive and Equality and Human Right Commission should not be included in the remit of the SEB. If any other organisations are considered for inclusion, we argue they must not be added until the core bodies are amalgamated and fully resourced and operational.

# Managing the labour market: a recent history

## Labour market landscape from 1973

10. The Employment Agencies Act 1973 introduced licensing of employment agencies,<sup>9</sup> and the inspection authority of EAS<sup>10</sup>. Licensing of employment agencies continued until the De-regulation and Contracting Out Act 1994 removed licensing (s35),<sup>11</sup> and replaced it with the ability of EAS to apply prohibition orders (Schedule 10). EAS inspects compliance of employment agencies, enforcing the Conduct of Employment Agencies and Employment Businesses Regulations (the Conduct Regulations), first introduced in 1976<sup>12</sup>, with the most recent amendment being in 2022<sup>13</sup>.

11. The Gangmasters (Licensing) Act 2004<sup>14</sup> began as a private members bill<sup>15 16</sup> and led to the creation of the GLA. The 2004 Act introduced licensing of employment agencies (gangmasters) who provide labour in the agricultural and shellfish industries. As this would duplicate the regulatory control over certain employment agencies that operated in the agricultural and shellfish industries,<sup>17</sup> its creation effectively disapplied the Conduct Regulations. Those conditions were re-applied under GLAA control through its licensing conditions.<sup>18 19</sup>

12. Despite calls for the extensions of licensing, the introduction of the UK's standalone forced labour offence in 2009,<sup>20</sup> and a further private member's bill seeking an extension to construction in 2010,<sup>21</sup> there were no changes to its remit prior to the Modern Slavery Act 2015.<sup>22</sup> This committed the next government to reviewing the role of the GLA.

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<sup>9</sup> [Employment Agencies Act 1973, section 1 Employment agencies and businesses to be licensed](#)

<sup>10</sup> [Employment Agencies Act 1973, section 9 Inspection](#)

<sup>11</sup> [Deregulation and Contracting Out Act 1994, section 35 Employment agencies etc.: replacement of licensing.](#)

<sup>12</sup> [The Conduct of Employment Agencies and Employment Businesses Regulations 1976](#)

<sup>13</sup> [The Conduct of Employment Agencies and Employment Businesses \(Amendment\) Regulations 2022](#) a full list of the amendments to the conduct regulations can be found at:

<https://www.legislation.gov.uk/primary+secondary?title=conduct%20of%20Conduct%20of%20Employment%20Agencie%20and%20Employment%20Businesses%20Regulations>

<sup>14</sup> [Gangmasters \(Licensing\) Act 2004](#)

<sup>15</sup> Initiated by Jim Sheridan, Labour

<sup>16</sup> The Conversation: "[Morecambe Bay cockling tragedy: 20 years on, remembering the victims and their impact on modern slavery law](#)", February 2024

<sup>17</sup> [Gangmasters \(Licensing\) Act 2004, section 27 Exclusion of provisions relating to employment agencies and businesses](#)

<sup>18</sup> [The Gangmasters \(Licensing Conditions\) Rules 2006](#)

<sup>19</sup> [The Gangmasters \(Licensing Conditions\) Rules 2009](#)

<sup>20</sup> [Coroners and Justice Act 2009, section 71 Slavery, servitude and forced or compulsory labour](#)

<sup>21</sup> [Gangmasters Licensing \(Extension to Construction Industry\) Bill, 2010](#)

<sup>22</sup> [Modern Slavery Act 2015, section 55 Gangmasters Licensing Authority](#)

## Changes from 2015 to 2016

13. On 21st May 2015, the then-Prime Minister David Cameron stated:

“So we will make a crucial change: creating a new enforcement agency that cracks down on the worst cases of exploitation. Responsibilities for this are currently split between 4 different departments. They will be brought into one body – so businesses cannot bring in cheap labour that undercuts the wages of local people.”<sup>23</sup>

14. This led to a consultation on the future landscape of the labour market,<sup>24</sup> into which the planned review of the GLA was subsumed. The outcome of the consultation<sup>25</sup> led to changes implemented in Chapter One of the Immigration Act 2016<sup>26</sup> concerning the labour market. The consultation did not meet the ambition set out in David Cameron’s speech but did change the name of the GLA to GLAA, expanding its remit, and provided new investigative powers to tackle offences up to and including the forced labour offence (now part of the Modern Slavery Act). Instead of a new enforcement agency, the consultation created the role of the Office of the Director of Labour Market Enforcement (ODLME) to review the work of the GLA, NMW, and EAS, with a remit to recommend changes to improve labour market enforcement and closer working of the three agencies.

15. Although the remit of the GLAA was widened, it was not given powers to investigate forced labour in the devolved authorities of Scotland and Northern Ireland, which had separate legislation for modern slavery offences.<sup>27</sup>

## Reviews from 2017

16. The government commissioned Matthew Taylor to undertake a review of Modern Working Practices and worker exploitation, particularly in the gig economy. Whilst the review did make a number of recommendations, it did not propose a significant reform of employment law. As a response to the Taylor review, the Government published the 2018 Good Work Plan, accepting some, but not all the review’s recommendations.<sup>28</sup> In addition, the review proposed:

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<sup>23</sup> David Cameron: “[PM Speech on Immigration](#)”, May 2015

<sup>24</sup> “[Tackling Exploitation in the Labour Market – Consultation](#)”, October 2015

<sup>25</sup> “[Tackling Exploitation in the Labour Market – Government Response](#)”, January 2016”

<sup>26</sup> [Chapter 1 Labour Market, Immigration Act 2016](#)

<sup>27</sup> See: Scotland - [Human Trafficking and Exploitation \(Scotland\) Act 2015](#); Northern Ireland - [Human Trafficking and Exploitation \(Criminal Justice and Support for Victims\) Act \(Northern Ireland\) 2015](#)

<sup>28</sup> HM Government: “[Good Work Plan](#)”, December 2018

“... a new, single labour market enforcement agency to better ensure that vulnerable workers are more aware of their rights and have easier access to them and that businesses are supported to comply.”<sup>29</sup>

17. This led to the “Good Work Plan: Establishing a new Single Enforcement Body for Employment Rights” consultation (the SEB consultation) in 2019,<sup>30</sup> which sought views on activities and the agencies that should be within the new body, as well as what other sanctions, including fines, might be appropriate.<sup>31</sup>

18. During 2019 a consultation<sup>32</sup> was also initiated to consider enhancement to the Modern Slavery Act 2015’s Transparency in Supply Chains (TISC) requirement for businesses with an annual turnover of over £36 million. This required a business in scope to publish a statement setting out the actions it had taken, or planned, to reduce the risk of modern slavery in its supply chain. In response<sup>33</sup> the government stated:

“We will consider enforcement options in line with the development of the Single Enforcement Body for employment rights and issue a further update in due course.”

19. The Government response to the SEB consultation<sup>34</sup> included proposals that:

- The Single Enforcement Body (SEB) would consist of EAS, GLAA, and NMW
- There was “limited operational evidence to demonstrate that an extension of the gangmasters licensing scheme would be the most effective method in tackling non-compliance in sectors that operate on a direct employment model.” (page 12), but that other options would be kept under review, which might include “whether a new licensing scheme would be effective” (page 13)
- The SEB would have powers to levy fines against non-compliant companies as part of managing the enforcement of the revised TISC regime (page 14) It would enforce umbrella schemes, holiday pay, statutory sick pay, and unpaid employment tribunal awards would sit within the remit of the SEB (page 16)
- It would strengthen links with the Insolvency Service, the Health and Safety Executive, and local authorities (page 17)
- Introduce new civil penalties for breaches of the GLAA licensing and EAS standards where there has been a loss of wages (page 22).

20. Despite the announcement of these proposals in 2021, the SEB was never created.<sup>35</sup>

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<sup>29</sup> Ibid see page 42.

<sup>30</sup> [Good Work Plan: establishing a new Single Enforcement Body for employment rights- Consultation](#), July 2019

<sup>31</sup> See consultation Question 24, page 43: “whether civil penalties should be introduced for the breaches under the gangmasters licensing and employment agency standards regimes that result in wage arrears?”

<sup>32</sup> [Transparency in supply chains consultation](#), July 2019

<sup>33</sup> [Transparency in supply chains Government response, September 2020](#)

<sup>34</sup> [Establishing a new single enforcement body for employment rights Government response](#), July 2021,

<sup>35</sup> [Ministers finally ditch much delayed worker’s watchdog- Personnel Today](#)

## Academic and grey literature reports on the SEB

21. Academic research has exposed the fragmented nature of labour market enforcement in the UK, with functions carried out by different inspectorates.<sup>36</sup> Further contributions to the literature suggest that the UK is some distance from meeting ILO recommendations on the ratio of the level of inspectors to levels of workers. This distance is more starkly illustrated, for example, by comparison to the Netherlands and Norwegian inspectorates.<sup>37</sup> This concern over the level of resources, has also been commented on in earlier research that recommended the creation of a SEB:

“Risk-based and intelligence-led inspection regimes might reduce the burden on business, but when resources are scarce the approach dictates that only the highest-risk businesses are inspected. ... To improve this (and in the absence of an overarching labour inspectorate) some kind of merger of regulatory bodies in the agency sector should be considered ... This could be incremental and sector-by-sector rather than a ‘big bang’.”<sup>38</sup>

22. More recent papers re-stated the case for a SEB, properly resourced and empowered, in the hiatus resulting from the lack of progress by Government. A recent paper<sup>39</sup> concluded that a defined remit and adequate resourcing were essential for a SEB to succeed. This was echoed in the recommendations from the Resolution Foundation.<sup>40</sup> See Appendix 5 for a summary of the recommendations from both reports.

## International recommendations applying to the UK

23. The UK is a participating state of the Organisation for Security and Cooperation in Europe (OSCE). It is also a member state of the Council of Europe. These relationships result in periodic inspections by the OSCE’s Special Representative and Co-ordinator for Combating Trafficking in Human Beings (CTHB) and the Council of Europe’s Group of Experts on Action against Trafficking in Human Beings (GRETA). GRETA’s third report on the UK in 2021 recommended:

“245. Reference has already been made in paragraph 28 to the plans to set up a Single Enforcement Body, by merging the currently existing three bodies in the area

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<sup>36</sup> Clark, I., Collins, A., Fearnall-Williams, H., Pickford, R., Hunter, J. (2023) [Persistently non-compliant employment practice in the informal economy: permissive visibility in a multiple regulator setting](#). *Cambridge Journal of Economics*, 47 (3), pp. 611-632. ISSN 0309-166X

<sup>37</sup> “[Labour Exploitation and Work-Based Harm](#)”, Studies in Social Harm, S. Scott, Policy Press, (2017), pages 191-194.

<sup>38</sup> “[Regulation and enforcement to tackle forced labour in the uk: a systematic response?](#)”, A. Balch, JRF Programme Paper: Forced labour, Joseph Rowntree Foundation (2012), page 46

<sup>39</sup> “[Restating the case for a Single Enforcement Body](#)”, University of Nottingham Rights Lab/Independent Anti-Slavery Commissioner (January 2023)

<sup>40</sup> “[Enforce for Good](#)”, Resolution Foundation, (April 2023)

of labour market enforcement (GLAA, HMRC and HSE). GRETA stresses the importance of endowing this new Single Enforcement Body with a remit and resources which would enable it to effectively prevent and combat human trafficking for the purpose of labour exploitation.”<sup>41</sup>

24. The 2022 OSCE Inspection report recommended:

“Establishing a Single Enforcement Body with adequate funding and resources to solidify coordinated enforcement action to address labour exploitation, protect vulnerable workers and provide better support to businesses.”<sup>42</sup>

25. Future inspections by both organisations will require updates and progress on action taken in relation to their recommendations. In addition, any future GRETA inspection may use its 2022 “Recommendation on Forced Labour” as a framework for assessing improvements in the UK’s approach to prevent labour exploitation. This recommendation<sup>43</sup> included proposals on labour market regulation, compensation, non-punishment, and investigation through to prosecution. The creation of the SEB would demonstrate the UK’s commitment to addressing these recommendations.

## **Recent Labour Party announcements on a single enforcement body**

26. At the launch of the Resolution Foundation report in April 2023, Labour Party deputy leader Angela Rayner set out the party’s commitment to the creation of a SEB.<sup>44</sup> This was re-stated in the 2024 “Labour’s Plan to Make Work Pay”,<sup>45</sup> repeating this intention in its manifesto commitments.<sup>46</sup> On 23 June 2024, The Guardian reported that the new body would be called the Fair Work Agency, and it would amalgamate EAS, GLAA, and NMW.<sup>47</sup>

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<sup>41</sup> [Council of Europe – GRETA: Third evaluation report on the UK, October 2021](#). The report incorrectly suggested HSE rather than EAS was scheduled to be in the SEB.

<sup>42</sup> [Report by the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings, Valiant Richey following the country visit to the United Kingdom, 7-11 November 2022](#)

<sup>43</sup> Council of Europe: “[Preventing and combating trafficking in human beings for the purpose of labour exploitation - Recommendation CM/Rec\(2022\)21](#) (2023)”

<sup>44</sup> “[Resolution Foundation “Playing by the rules - A new approach to enforcing workers’ rights”](#), April 2023- /- see video time point 2.26.00.

<sup>45</sup> [Labour’s plan to make work pay](#)

<sup>46</sup> [Change – Labour Party Manifesto 2024](#) (page 45)

<sup>47</sup> The Guardian [Labour watchdog will have ‘real teeth’ to prosecute rogue employers, says Angela Rayner](#), June 2024

## Analysis and recommendations

27. This section examines recommended areas for change in the enforcement landscape. These changes are essential for the SEB to have the remit and capability to take appropriate enforcement action. This requires a re-balancing of the regulatory controls imposed through the current Better Regulation frameworks, as well as alignment of remit and powers throughout the UK, and enabling the Authority to use new sanctions, and investigate new offences. Such changes will also require a SEB to identify new threats and be enabled to readily respond to them.

### Enforcement over regulation: a matter of priorities?

28. Above we argue that the SEB must be considered an enforcement body, and not just a regulator. How it is defined affects how it is controlled, and how effective it can be. If it is defined as a regulator, it will restrict its approach, which must be flexible to emerging threats and trends. Transition to an enforcement body requires change in the Better Regulation landscape, as explained below.

### The role of regulatory codes of practice and the regard for growth

29. The Legislative and Legal Reform Act 2006 introduced the requirement for bodies defined as regulators<sup>48</sup> to follow a Code of Practice<sup>49</sup> (the Compliance Code, now replaced by the Regulator's Code)<sup>50</sup> when conducting regulation and enforcement activities. The GLA, (now GLAA) was included in those regulations, as was EAS (by reference in the regulation to the Employment Agencies Act 1973). It did not include either the National Minimum Wages team or the National Minimum Wages Act 1998.

30. The De-regulation Act 2015 section 108<sup>51</sup> introduced further requirements on regulators to "have regard to growth" in their regulatory functions. Section 110(1) of that Act<sup>52</sup> introduced the requirement to introduce the Growth Duty code.<sup>53</sup> The defined regulatory functions now also included the National Minimum Wage Act 1998.<sup>54</sup> The functions of all three SEB candidate bodies were therefore within the scope of the Growth Duty, and its Code:

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<sup>48</sup> [The Legislative and Regulatory Reform \(Regulatory Functions\) Order 2007](#)

<sup>49</sup> [Legislative and Regulatory Reform Act 2006 , section 23 Code of Practice: Procedure](#)

<sup>50</sup> Department for Business, Innovation and Skills, Better Regulation Delivery Office, [Regulator's Code](#), April 2014

<sup>51</sup> [Deregulation Act 2015 section 108 Exercise of regulatory functions: economic growth](#)

<sup>52</sup> [Deregulation Act 2015, section 110 Guidance on duty under section 108](#)

<sup>53</sup> Department for Business and Trade [Growth Duty Statutory Guidance – refresh](#), May 2024

<sup>54</sup> [The Economic Growth \(Regulatory Functions\) Order 2017](#) (legislation.gov.uk)

“The Growth Duty establishes economic growth as a factor that all specified regulators should have regard to in making strategic level decisions, alongside or as part of the delivery of their other regulations, duties, and protections as set out in the relevant legislation.” (page 8)

And:

“... certain enforcement actions, and other activities of the regulator, can be particularly damaging to the growth. These include, for example, enforcement actions that limit or prevent a business from operating; financial sanctions; and publicity, in relation to a compliance failure, that harms public confidence. ... Regulators should ensure that enforcement action is always proportionate and considers the needs of businesses. In particular, businesses that are in the ‘start-up’ period, for example, require a specific style of intervention to enable them to meet the particular challenges that they experience in achieving compliance in all areas, whilst becoming established in their business.” (Page 29).<sup>55</sup>

31. NTU research<sup>56</sup> into businesses that start in the informal economy shows that a light-touch regulatory approach and an emphasis on allowing new business to grow at almost any cost puts workers at harm. Conversely, decent work and enforcement of employment rights is not an impediment to growth or productivity improvement; it creates a level playing field for compliant business to thrive, and workers’ rights to be protected in parallel. However, a narrow interpretation of “growth” focused on business results could hinder effective enforcement that is designed to foster a healthy business environment that benefits both workers and business.

32. The GLAA’s guidance,<sup>57</sup> on how it implements the Regulators’ Code principles, explains how it applies consideration of growth in regulatory decisions. The GLAA did not amend or expand the guidance when the Growth Duty code was introduced. Nor did its enforcement policy<sup>58</sup> explicitly refer to growth, however, it did set out how certain situations would be dealt with proportionately. The EAS Enforcement Policy<sup>59</sup> does explicitly reference growth whereas the NMW enforcement policy<sup>60</sup> does not. Even where sanction policies implicitly consider growth (or in the case of EAS

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<sup>55</sup> [Growth Duty: Statutory Guidance – Refresh, May, 2024](#)

<sup>56</sup> Cioce, G. Clark, I., Hunter, J. (2022) ‘How does informalisation encourage or inhibit collective action by migrant workers? A comparative analysis of logistics warehouses in Italy and hand car washes in Britain’ *Industrial Relations Journal*. 53(2) 126-141, <http://doi.org/10.1111/irj.12359>, Mendonca, P., Kougiannou, N., Clark, I. (2022) ‘Informalisation in gig food delivery in the UK: the case of hyper flexible and precarious work’ *Industrial Relations: A Theory of Economy and Society*. <http://doi.org/10.1111/irel.12320> and Clark, I. Collins, A., Hunter, J. Pickford, R. Barratt, J., Fearnall-Williams, H. (2023) ‘Persistently non-compliant employment practice in the informal economy: Permissive visibility in a multiple regulator setting’ *Cambridge Journal of Economics* <https://doi.org/10.1093/cje/bead007>

<sup>57</sup> [Implementation of the Regulators’ Code Principles, September 2018 - GLAA](#)

<sup>58</sup> [GLAA Enforcement Policy Statement, May 2019](#)

<sup>59</sup> [Employment Agency Standards \(EAS\) Inspectorate: enforcement policy statement - GOV.UK \(www.gov.uk\), updated April 2024](#)

<sup>60</sup> [National Minimum Wage: policy on enforcement, prosecutions and naming employers who break National Minimum Wage law - GOV.UK \(www.gov.uk\), updated February 2024](#)

explicitly) in the decision-making approach, problems for effective enforcement may arise. If standard operating procedures do not ensure that an investigator considers the growth duty in their recommendations on an appropriate investigation outcome, sanction decisions (particularly prosecutions) may be considered unsafe. For example, there are likely to be challenges by defence lawyers on technical points attempting to unpick prosecution decisions arguing that the growth duty may not have been considered. This places at risk necessary enforcement decisions and will continue to be a risk for a future SEB, unless existing regulator codes are revised.

33. In their enforcement policy statements the SEB candidate bodies recognise that a failure to tackle business non-compliance, and level the playing field, would foster, and encourage a culture of non-compliance, and ultimately offences of forced labour.<sup>61</sup>

34. The first principle in the Regulators' Code is:

"Regulators should carry out their activities in a way that supports those they regulate to comply and grow"

However, it must be balanced with the third principle that:

"Regulators should base their regulatory activities on risk"

35. An intelligence-led approach by the SEB must be based on risk. However, a focus on effective enforcement must also consider how intelligence and risk will be determined. For example, when an applicant applies for a licence, should it always be physically inspected, not inspected only if there is clear evidence of compliance from other official information, or only inspected if there are clear indicators or risk? Where the SEB sits on such a spectrum will influence how robust its impact on the labour market may be, which must not be constrained by regulatory frameworks applied generically to all UK regulators.

36. Therefore, whilst the Regulators' Code and the Growth Duty Code apply to numerous regulators and different regulatory environments, change, or a degree of exemption in their application, is required so that the SEB's ability to protect workers' rights is not prevented. There must be a recognition that the protection of worker rights must be a priority over a focus on reducing burdens on business. Consequently,

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<sup>61</sup> NMW policy: "Employers who fail to pay the NMW not only breach the legal obligations they owe to their workers, but they are also contributing to depressing the pay of people working in their local communities. This can cause a downward spiral of pay and working conditions which often results in people choosing to work in the 'shadow economy'. ... Non-compliance with the NMW can also have a devastating effect on businesses because it is very difficult for honest businesses to compete against those who are able to under-cut them as a consequence of not paying the NMW."

EAS policy: "Compliance serves not only to protect workers' rights, as well as the rights of hirers, but also to maintain a level playing field in the labour market. Non-compliant businesses create a competitive disadvantage, which is incompatible with economic growth."

GLAA policy: "The GLAA's objective is to create a compliant business sector. ... The GLAA will consider such situations carefully to ensure that an appropriate approach to sanctions is taken that delivers a proportionate and consistent outcome that focuses on the harm to workers at the heart of the decision-making process."

amending the Growth Duty to reflect the importance of enforcement in the labour market to protect workers, which supports, not undermines, growth, is necessary to prevent procedural defence counsel tactics, that can undermine the effectiveness of sanctions including prosecution where required. The SEB must be recognised as an enforcement body first,<sup>62</sup> and regulator second. Determining the key difference between its status as an enforcement body or a light-touch regulator under the previous Conservative government requirements is crucial.

37. A review of the code of practice on regulation must be undertaken to ensure it does not prevent a strong enforcement response determined by the SEB, enabling the protection of worker rights as a priority.

## **Extending the licensing remit**

38. The licensing model introduced in 2006 and operated by the GLAA created a holistic compliance framework, ensuring that regulated businesses that were required to hold a licence were compliant across all relevant labour market regulations. In creating the framework, the GLAA's licensing model improved the compliance in the agricultural and related sectors. It is a model, if applicable in other sectors, acknowledging any operational differences, that would be expected to be similarly effective.

39. Where it is determined that licensing must be extended the way it is implemented must provide effective control, without regulatory gaps. This requires a thorough examination of all employment models operating in industry sectors being considered for inclusion within the licensing regime.

40. The 2015 consultation "Tackling Exploitation in the Labour Market" sought views on the reform of the licensing regime. Key comments in the 2016 response to the consultation included:

"... the current regime was too narrow, and that licensing could be focused on new and emerging markets whilst businesses that demonstrate consistent compliance could be subject to a reduced regulatory burden"<sup>63</sup>

and others stated it:

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<sup>62</sup> If it is not intended that the SEB should be an enforcement body it would not be expected to have the criminal investigation powers it will inherit from the GLAA. These powers are from the Police and Criminal Evidence (England and Wales) Act 1984, Regulation of Investigatory Powers Act 2000, Proceeds of Crime Act 2002, and Investigatory Powers Act 2016

<sup>63</sup> "[Tackling Exploitation in the Labour Market – Government response](#)," para 71.

“... would only support an extension of licensing to other sectors where there was evidence that licensing was appropriate and proportionate to address the problem.”<sup>64</sup>

41. Despite the general support for the extension of licensing, and acknowledgement of other high-risk sectors (e.g. construction, hospitality, and care sectors)<sup>65</sup> the Government response concluded that:

“... we will legislate to reform the licensing regime to ensure that it is flexible enough to respond to those changing risks in existing or new labour sectors, if the evidence supports its use. The Director will be given a critical role in recommending changes to the licensing regime to the Secretaries of State, as part of their overall strategy to tackle exploitation. ...”<sup>66</sup>

42. Section 3<sup>67</sup> of the Gangmasters (Licensing) Act 2004 originally established the scope of activities that fell within the licensing regime. Section 3(5) explained the activities that the Secretary of State could make regulations to exclude or include. In the original text of the Act Section 3(5)(b)(i) and (ii) were limited to the potential to include specific harvesting or fish farming activity respectively. The Immigration Act 2016 amended section 3(5)(b) to create an enabling power:

“including work of [F1a prescribed description as being work to which this Act applies].”<sup>68</sup>

and introducing a new s3(6):

“[F2(6) The Secretary of State must consult the Authority and the Director of Labour Market Enforcement before making regulations under subsection (5).]”

43. The Government response to the SEB consultation, referred to the Responsible Car Wash Scheme pilots, as an alternative to statutory licensing, as well as other high-risk sectors, such as care and textiles (reflecting on experience from the Operation Tacit Leicester pilot). In response to calls from the British Retail Consortium (BRC) to introduce business licensing in the textiles sector the Government concluded that:

“... this could not be achieved by a simple extension of the current gangmasters licensing scheme, as a significant proportion of the workers in the textile industry are employed directly, rather than through labour providers.”

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<sup>64</sup> Ibid. para 73

<sup>65</sup> Ibid. para 74

<sup>66</sup> Ibid. para 111

<sup>67</sup> [Gangmasters \(Licensing\) Act 2004, section 3 Work to which this Act applies](#) (original as enacted)

<sup>68</sup> Immigration Act 2016 amendments to [section 3 the 2004 Act](#) (as amended)

44. This recognised the different business models within which workers might be employed, and exploited, and would require a different model of licensing if the BRC proposal had been accepted. The Government response concluded that it would:

... strengthen our understanding of levels of non-compliance across the garment trade. This will form a basis for us to consider options that will drive up standards across the sector, from manufacturers to retailers, including whether a new licensing scheme would be effective.”<sup>69</sup>

45. As the nature of work changes so too do the employment models in use. The existing licensing model licences agencies that provide workers to end users. But in other sectors prone to exploitation, with low-skilled workers and wages, direct employment, or self-employment may be used, or in some cases a combination of different models of employment. These differences require careful analysis for any proposal to extend licensing, so that the model is applicable to the prevailing employment methods, and can be applied throughout a sector consistently, or cross-sector to a particular business type.

46. ODLME strategy reports have highlighted concerns in industry sectors such as car washes, nail bars, the textile industry, and the care sector. However, none of the recommendations from the 2023-24 Strategy proposed an extension of licensing. Increasing numbers of referrals received by the GLAA concerning workers in the care sector led to stakeholder roundtables to discuss the proposal of extending licensing to the care sector, and their summary report in March 2024.<sup>70</sup> It is not known what the current view of the ODLME is towards extending licensing as proposed by the GLAA.

47. Under the current framework the ODLME would propose changes to labour market functions and priorities in a strategy report,<sup>71</sup> which could include proposals to extend licensing. Such proposals would have to be accepted by the Secretary of State for Business and Trade and the Home Secretary. Alternatively, if independent GLAA proposals were made the Secretary of State would have to consult the ODLME before deciding whether to implement an extension of licensing.<sup>72</sup> If approval is given new sectors can be included within the licensing regime.

48. Extending the licensing remit could now be implemented more quickly through secondary legislative regulations. However, if an extension of licensing prior to the creation of a SEB was implemented, the dis-application of EAS's jurisdiction, which necessarily occurred when the GLA was created, would again need to occur for specified industry sectors that were to be brought within the scope of licensing. Furthermore, the GLAA proposal to extend licensing to the social care sector would

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<sup>69</sup> Department for Business, Energy, and Industrial Strategy “[Establishing a new single enforcement body for employment rights Government response](#)”, pages 12-13

<sup>70</sup> Received by the TUC as an attendee at the roundtables

<sup>71</sup> See [Immigration Act 2016, section 2 Labour market enforcement strategy \(sub-section \(2\)\(b\)\(i\)\)](#). - 2

<sup>72</sup> [Gangmaster \(Licensing\) Act 2004, section 3 Work to which this Act applies, sub-section \(6\)](#)-

only enable licensing of employment agencies engaged in the supply of workers. The model would not cover a care business that was an approved visa sponsor, recruiting and employing those workers in its care home, or where it provided a domestic care service into private home.

49. The GLAA proposals were made before the Labour Party manifesto and commitments to introduce a SEB were known. They argued that:

“It is proposed that the GLAA is given statutory responsibility to regulate labour providers in the adult social care sector in the same manner by which it currently regulates its existing sectors.”

And:

“The (GLAA’s) public register of licence holders could be used by the CQC to ensure the care providers they regulate were mandated to draw labour from a licensed provider.”

50. However, not all care workers are recruited and supplied by employment agencies, and not all exploitation can be attributed solely to the employment agency, as some care homes recruit directly. They may recruit directly from overseas if they hold approved sponsor status. Therefore, extending licensing, as proposed, would leave regulatory gaps

51. Those gaps would potentially require a different model of licensing if it was to apply to all employment models. If licensing of a care home applying a direct employment model is required, it is a distinctly different entity to licence. It raises the same issues that Government raised regarding business licensing in the textiles sector. Licensing of the direct recruiter/employer would have to cover an organisation in a business to consumer relationship (B2C) (Car washes and nail bars are also business models where licensing would be covering a B2C relationship). NTU is undertaking a feasibility study on mandatory licensing across the hand car wash sector in the UK<sup>73</sup>. Whilst this work is ongoing, we believe this may provide an alternative model to current practice. It should be noted that two NTU projects that explored voluntary licensing have highlighted that this model has had limited to no impact on unlawful practice and regulatory compliance.<sup>74</sup> In two studies across seven areas of the UK we found that various models of promoting a voluntary licensing scheme and showcasing the legal minimum compliance needed in the sector had little to no impact on regulatory improvements. This evidences the need to undertake a different model for sectoral improvements in the UK.

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<sup>73</sup> NTU: “ [Designing and Testing a Local Authority Licensing Scheme for Hand Car Washes across the United Kingdom](#) ”

<sup>74</sup> Pickford, R., Sharma, N., Barratt, J., Clark, I., Hunter, J. (2022) [Can hand car washes be improved? An Intervention Evaluation with the Gangmaster and Labour Abuse Authority and Responsible Car Wash Scheme](#), Nottingham Civic Exchange and Sayers, T., Sharma, N., Barratt, J., Pickford, R., Clark, I. (2022) [Car Wash Code of Practice Project Report: Home Office Modern Slavery Prevention Fund. Nottingham Civic Exchange](#)

52. When extension of licensing is considered, the potential for regulatory overlap must be considered. In the case of care, aside from EAS and required legislative change, the Care Quality Commission<sup>75</sup> (CQC) assesses care provision across England. There are equivalent bodies in all three devolved administrations (Care Inspectorate Wales,<sup>76</sup> Care Inspectorate Scotland,<sup>77</sup> and the Regulation and Quality Improvement Authority Northern Ireland).<sup>78</sup> This renders the regulatory landscape more complicated than that which existed regarding the disapplication of EAS and EAI Northern Ireland's regulatory responsibilities when the GLA was created, if further legislative amendments are required to the role of the care regulators.

53. As stated in previous consultation responses, an evidence base is necessary to validate the extension of licensing into other sectors through new regulation. This requires a comprehensive assessment of the business models operating in the sector proposed, to determine how regulation would apply, and ensure proper resourcing where extension is agreed. Whilst applying the GLAA's licensing standards across other sectors, suitably enhanced to cover any sector specific issues, would provide additional oversight into areas not covered by EAS, the Government response to the 2016 consultation reported the concern of respondents that:

"It was felt that if those standards were applied selectively or based on a subjective assessment of risk, they would fail to create a fair and level playing field."<sup>79</sup>

54. Currently, an ODLME recommendation, included in its annual strategy, would normally be expected as part of any consideration to extend licensing. The creation of the SEB, as a single body, might remove the need for the ODLME, established to have oversight over three separate bodies (see also paragraph 152). This might further streamline the approach required if an extension of licensing is justified in future in any activity or sector. The issue of the disapplication of EAS authority could also be overcome through SEB founding legislation, as the SEB would become responsible for the operation of the Employment Agencies Act 1973, and compliance with the Conduct Regulations. This would ensure the new body could enter and inspect any employment agency. Nonetheless, it would not address the B2C type business licensing proposed regarding direct employers in the care and textiles sectors based on previous Government responses (see above). An alternative remedy is necessary to consider risks within this aspect of employment in high-risk sectors, which is considered below (see paras 55-58).

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<sup>75</sup> [Care Quality Commission website](#)

<sup>76</sup> [Care Inspectorate Wales website](#)

<sup>77</sup> [Care Inspectorate Scotland](#)

<sup>78</sup> [Regulation and Quality Improvement Authority Northern Ireland](#)

<sup>79</sup> "[Tackling Exploitation in the Labour Market – Government response](#)," para 73.

## General power of entry

55. Operation Tacit was initiated to consider offences of modern slavery in the textile sector in 2020, with the GLAA acting as lead enforcement body<sup>80</sup>. Unless there was information to suggest modern slavery offences were occurring GLAA inspectors could not use its Police and Criminal Evidence Act 1984 powers to obtain a warrant for entry, with force if necessary. It did not identify any such cases.<sup>81</sup> What evidence there was suggested a continuation of historic non-compliance with labour regulations that has been prevalent since at least the 1980s.<sup>82</sup> As the information did not meet the threshold for the GLAA to obtain a warrant of entry, further investigations could not continue. The compliance civil power of entry held by the GLAA only operates in the licensed sector. Therefore, extending licensing would bring with it a power of entry for such premises allowing for more robust enforcement of suspected infringements to be investigated, but business licensing in this sector has been discounted.

56. An alternative approach would be to enable the SEB to have a general power of entry to any premises<sup>83</sup> where a business operates. This new legislative power should cover all the existing powers of entry of the candidate bodies for the SEB. This would prevent a situation where an inspector entered to examine issues under one legislative authority, then identified other matters covered by different powers, but could not address them without a change of the authority to enter and carry out lawful inspection.

57. A general power of entry would have a direct effect but also produce an indirect effect creating a pressure for compliance by a business, recognising the possibility of an unannounced inspection. The new power would, in line with other powers, be backed by an offence of obstruction where a business did not comply and allow entry.

58. The creation and use of this power might also enhance the evidence base for further consideration of different models of licensing should they be required. Any civil power of entry should build on the GLAA's Code of Practice,<sup>84</sup> and have regard to the Home Office Power of Entry Code of Practice<sup>85</sup> (NB: this is distinct from the Police and Criminal Evidence Act 1984 Codes of Practice, which cover entry under a warrant). A comparison of the existing civil powers of entry is set out in Appendix 6.

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<sup>80</sup> [Review of Operation Tacit- GOV.UK \(www.gov.uk\)](https://www.gov.uk)

<sup>81</sup> Discussions with the Head of Operations who had lead responsibility for Operation Tacit.

<sup>82</sup> Personal knowledge of the author as a social security fraud investigator in the sector of Leicester within which most textile factories operate.

<sup>83</sup> Premises is defined in legislation – e.g. [see section 16\(6\) of the Gangmasters \(Licensing\) Act 2004](#)

<sup>84</sup> [GLAA Code of Practice on compliance, enforcement, labour market and modern slavery investigations](#), October 2018

<sup>85</sup> Home Office "[Code of Practice Power of Entry](#)"; December 2014

## Operation of the Seasonal Workers Scheme (SWS)

59. In 2022 the report by the Independent Chief Inspector of Borders and Immigration (ICIBI) cited concerns over the lack of clarity of the roles of the UKVI's Compliance teams, and the GLAA regarding monitoring of the SWS.<sup>86</sup> Similar comments were made in the Migration Advisory Committee's (MAC) July 2024 report,<sup>87</sup> which, in its executive summary stated:

"To compound matters, the current enforcement landscape for Seasonal Workers is fragmented and does not offer an adequate safeguard of seasonal worker rights. We recommend a more coordinated approach between the bodies currently involved in worker welfare and a clearer delineation of responsibility for each."

60. The report commented on the overlap of responsibilities, leading to confusion of roles by stakeholders, and supported giving the GLAA a power to inspect farms as part of a wider responsibility for SWS compliance:

"Currently, the GLAA is responsible for regulating scheme operators but cannot take action against a farm unless modern slavery is suspected, generating a break in the chain of regulation where issues that do not meet the threshold of modern slavery can be missed (e.g., bad accommodation, confusion over how pay & hours works)."

61. The ODLME had suggested to MAC that the ODLME should take a wider coordinating role in the absence of a SEB, whilst the GLAA commented on the work it was undertaking with the International Organisation for Migration and overseas Governments to assist reducing risks of exploitation in the SWS worker recruitment process. These issues are central to the view we hold that there would be better protection for workers in the SWS, clarity for business, and coordination of enforcement and monitoring if the SEB took over the compliance functions for the SWS scheme. This would streamline the current overlaps with the GLAA.

62. Authorised operators of the UK Seasonal Workers Scheme must hold GLAA licences. In future they will continue to have to hold such licences but issued by the SEB. Scheme operators also must comply with scheme standards set by the Home Office and are monitored by a compliance team within UKVI. Operators are effectively regulated twice. A general power of entry (proposed above) would enable the SEB to have a statutory power to consider the working conditions of seasonal workers on farms, where they are directly employed. This aligns with MAC's proposals. The SEB would therefore have an oversight that may enable streamlining of the current framework.

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<sup>86</sup> ICIBI "[An inspection of the immigration system as it relates to the agricultural sector](#)" May – August 2022

<sup>87</sup> MAC "[Review of the Seasonal Worker visa](#)", July 2024

63. The ODLME 2023-2024 strategy recommendation 7<sup>88</sup> proposed a more joined up approach to the monitoring of the operation of seasonal workers scheme operators. The current scheme is operated between DEFRA and UK Visas and Immigration (UKVI). The requirement of the scheme operators to hold a GLAA licence also means that if an operator uses a sub-contractor, it must also hold a GLAA licence. This also applies if the sub-contractor is based overseas<sup>89</sup>. The GLAA must determine whether the sub-contractor is fit to hold a licence. This determination includes checking that it is compliant with the domestic labour laws where it is based. That requires liaison with counter-part authorities in the countries where the sub-contractor is based to confirm compliance. This has led to the GLAA's increasing liaison with the IOM and creating Memoranda of Understanding with overseas authorities. This is supported by MAC and recommended for expansion (we comment on this further in the section on "Logistical issues for the SEB" - international functions, paras 171-179).

64. UKVI undertakes compliance checks of seasonal workers scheme operators, and conditions on farms through a dedicated compliance unit. Guidance on the requirements on the operators states they must comply with UK employment law<sup>90</sup> and comply with compliance inspection requirements.<sup>91</sup> This illustrates the overlap with GLAA licensing standards, which apply to the scheme operators.

65. There has been criticism of the scheme, and concerns over the protection of the workers' rights. The charity Focus on Labour Exploitation's (FLEX) 2024 report<sup>92</sup> recommended additional resourcing to "conduct regular proactive inspections" of the scheme. This repeated a recommendation from its 2021 assessment<sup>93</sup> which also highlighted that:

- additional resources were needed to conduct overseas licence and compliance inspections.
- an annual report from the GLAA on health and safety risks identified and tackled as part of license compliance inspections for SWP participating farms was required.
- funds were needed to increase personnel and numbers of inspections by the GLAA in Scotland.

66. Whilst GLAA and UKVI work closely and provide an interconnected compliance framework, there is arguably regulatory overlap. This will continue once the SEB is established. The calls for more resources together with the 2024 proposal to increase

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<sup>88</sup> ODLME, [UK labour market enforcement strategy 2023-2024](#), page 15

<sup>89</sup> See section 5(3) "Territorial Scope of Application", [Gangmasters \(Licensing\) Act 2004 \(legislation.gov.uk\)](#)

<sup>90</sup> UK Visas and Immigration, [Workers and Temporary Workers: guidance for sponsors part 3: sponsor duties and compliance](#), updated March 2024, paragraph C1.48

<sup>91</sup> UK Visas and Immigration [Workers and Temporary Workers: guidance for sponsors part 3: sponsor duties and compliance \(accessible\) - GOV.UK \(www.gov.uk\)](#), paragraph 7.6

<sup>92</sup> Focus on Labour Exploitation (FLEX) ["Not here for the weather: Ensuring safe and fair conditions on the UK's Seasonal Worker Scheme", June 2024](#), page 52

<sup>93</sup> FLEX ["ASSESSMENT OF THE RISKS OF HUMAN TRAFFICKING FOR FORCED LABOUR ON THE UK SEASONAL WORKERS PILOT"](#), March 2021

the focus on compliance may also provide an opportunity to reduce regulatory overlaps. As the SEB, through its overall responsibilities, will consider direct employers, and not just GLAA licence holders, this could include consideration of the transfer of the UKVI compliance function to the SEB. This would also address the aforementioned ODLME 2023-24 strategy recommendation to improve a joined-up response to compliance. Furthermore, coupled with a general power of entry (see paras 55-58), and the continued international liaison (see paras 171-179), the SEB would provide the more coordinated response that MAC and ODLME recommend. The movement of this function to the SEB would mirror where such similar responsibilities sit in the USA's Department of Labour, rather than Immigration.

## **Alignment of authority to investigate offences in all UK jurisdictions**

67. Whilst the creation of a SEB must introduce greater cohesion and consistency in terms of labour market enforcement it also provides the opportunity to address the current patchwork quilt of jurisdictional differences. If the SEB does not have the same authority, powers, and sanctions, in all UK jurisdictions, it would not be able to exercise the same level of protection of worker rights. Nor would it be able to comprehensively investigate unlawful practice that occurs within businesses that operate across the UK or ensure the application of a consistent sanction regime throughout the UK. Appendix 3 illustrates the current differences that each of the SEB candidate bodies has in terms of their individual geographical scope. A new SEB must address this to create consistency of performance and protection for workers across the whole of the UK, and a level playing field for the growth of compliant businesses.

68. The agreement for the GLAA to investigate forced labour offences in England and Wales reflects the recognition that its experience, and focus, positioned it to be an expert on forced labour. For their part, the police and National Crime Agency (NCA) remain experts in child and sexual exploitation, and the investigation of organised criminal groups who may be engaged in all forms of exploitation, and other offences. Aligning the GLAA's current authority in all jurisdictions of the UK under the SEB would enhance the response to forced labour. Cooperation with police and NCA would ensure that where those investigations relate to multiple forms of offending, the lead for investigation passes to those bodies, with support, in future, from the SEB for its area of expertise.

69. Alignment of powers also extends to the use of the Labour Market Enforcement Undertakings and Orders, and the Slavery and Trafficking Risk and Prevention Orders to prevent exploitation and ensure compliance consistently throughout the UK. The ability to do so is dependent on alignment of the ability to investigate other offences, which is explained below the next section.

### ***Authority to investigate forced labour offences in the devolved administrations***

70. The implementation of the GLAA's wider remit to investigate forced labour covers England and Wales. Though there are understood to have been an exchange of letters with the devolved authorities,<sup>94</sup> on the proposed extension of the GLAA's powers, no further work was commissioned to examine how the GLAA could inter-operate in Scotland and Northern Ireland.

71. The GLAA undertook discussions with the Scottish Government and Crown Office and Procurator Fiscal Service (COPFS) and Department of Justice Northern Ireland (DOJNI)<sup>95</sup> to consider how this gap could be filled. In Scotland, submissions made to the Lord Advocate, as requested by COPFS, obtained agreement to the principle of the extension of the role of the GLAA to investigate forced labour offences, and referred the issues back to the Scottish Executive for further consideration. Occurring at a time when a SEB might be developed, and against other Scottish modern slavery priorities, this was not developed further.

72. In Northern Ireland, discussions obtained the view that in principle such an extension was potentially beneficial. However, the lack of an Assembly prevented DOJNI from seeking Assembly Ministers' support to progress discussions further.

73. Section 3(3) of the Immigration Act 2016<sup>96</sup> defined labour market offences, and section 11<sup>97</sup> and Schedule 2<sup>98</sup> of that Act empowered the reformed GLAA to have authority to investigate such offences (see also section 11A of the Modern Slavery Act 2015),<sup>99</sup> which included the forced labour offence (section 1),<sup>100</sup> trafficking (section 2)<sup>101</sup> and intent to commit such offences (section 4)<sup>102</sup> in the Modern Slavery Act 2015. This authority also extended to its ability to use Slavery and Trafficking Risk Orders (STROs)<sup>103</sup> and Slavery and Trafficking Prevention Orders (STPOs)<sup>104</sup> in appropriate circumstances. These offences are mirrored in the Scottish and Northern Ireland legislation (see Appendix 7).

74. If a similar authority to section 11A of the Modern Slavery Act was introduced to amend the Scottish and Northern Ireland legislation, a SEB could provide a consistent

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<sup>94</sup> Copies of letters seen, but not held by the principal investigator of this paper

<sup>95</sup> This activity was undertaken by the principal investigator of this paper

<sup>96</sup> [Immigration Act 2016, section 3 Non-compliance in the labour market etc: interpretation](#)

<sup>97</sup> [Immigration Act 2016, section 11 Functions in relation to labour market](#)

<sup>98</sup> [Immigration Act 2016, Schedule 2 Functions in relation to labour market](#)

<sup>99</sup> [Modern Slavery Act 2015, section 11A Enforcement by Gangmasters and Labour Abuse Authority](#)

<sup>100</sup> [Modern Slavery Act 2015, section 1 Slavery, servitude and forced or compulsory labour](#)

<sup>101</sup> [Modern Slavery Act 2015, section 2 Human trafficking](#)

<sup>102</sup> [Modern Slavery Act 2015, section 4 Committing offence with intent to commit offence under section 2](#)

<sup>103</sup> See [Modern Slavery Act 2015, Part 2 Prevention Orders](#) and particularly [section 30A Enforcement by Gangmasters and Labour Abuse Authority](#), and [Immigration Act 2016, Schedule 2 Functions in relation to labour market, paragraphs 10-17](#)

<sup>104</sup> Ibid.

ability to investigate forced labour offences, referring such cases to the relevant prosecution authority in each jurisdiction.

75. The GLAA's authority to investigate the forced labour offence in the Modern Slavery Act 2015 was accompanied by the expansion of its investigative powers to enable such investigations to occur. Section 12<sup>105</sup> of the Immigration Act 2016 amended the Police and Criminal Evidence Act (PACE) 1984 for this purpose. Secondary legislation regulations were then introduced covering the precise scope of the PACE powers authorised.<sup>106</sup> Similar powers would be required to align the ability of the SEB to investigate forced labour offences throughout the UK.

76. In Northern Ireland similar provisions to PACE exist in the Police and Criminal Evidence (Northern Ireland) Order 1989.<sup>107</sup> Therefore, if approval from the Northern Ireland Assembly was secured, authority to use PACE (NI) powers could be aligned with the powers the GLAA currently has, and its related operational procedures, to ensure a consistent service is delivered enhancing the response to forced labour for the new SEB.

77. HMRC's investigation service already have the authority to use PACE (NI) powers<sup>108</sup> in Northern Ireland. In Scotland the powers to conduct criminal investigation is under different legislation to the PACE/PACE(NI) models. However, HMRC already has the authority to conduct criminal investigations within that jurisdiction under the relevant criminal justice legislation.<sup>109</sup> HMRC's existing authorities in Northern Ireland and Scotland serves as a precedent for the powers the SEB would need. The SEB would therefore need to be empowered to use the powers from the Northern Ireland and Scottish legislation, in addition to the powers it would inherit from the GLAA, which the GLAA currently operates under PACE.

78. As the existing powers to investigate NMW offences by HMRC in the devolved administrations already exist, enabling the use of those powers by the SEB would ensure continuity of authority of the SEB to manage NMW-related criminal investigations throughout the UK. It would therefore open the door to enabling the SEB to similarly secure and use those powers to investigate forced labour, if that was also approved. This would enable alignment and consistent delivery of an investigative resource for forced labour, and other labour market offences, that would remain within its remit, across the UK. This would support the Labour commitment to provide "... strong powers to inspect workplaces and take enforcement action against exploitation."<sup>110</sup> and demonstrate a commitment to meet international guidelines, such as the Council of Europe's Forced Labour recommendation that:

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<sup>105</sup> [Immigration Act 2016, section 12 PACE powers in England and Wales for labour abuse prevention officers](#)

<sup>106</sup> [The Police and Criminal Evidence Act 1984 \(Application to Labour Abuse Prevention Officers\) Regulations 2017](#)

<sup>107</sup> [The Police and Criminal Evidence \(Northern Ireland\) Order 1989](#)

<sup>108</sup> See: [HMRC's criminal investigation powers and safeguards](#), July 2021

<sup>109</sup> *Ibid*

<sup>110</sup> ["Labour's Plan to make work pay"](#), page 19-20

“Giving a legal mandate to labour inspectors to investigate trafficking in human beings has proven to be a powerful tool in some countries, where associated with adequate resources and not at the expense of the monitoring and enforcement of labour law. Therefore, member States could consider expanding the mandate of labour inspectors to this effect.”<sup>111</sup>

### ***Maritime powers***

79. The UK is a signatory to ILO Convention 188,<sup>112</sup> which concerns the working and living conditions of workers on fishing boats. Government guidance<sup>113</sup> sets out the expected activity to ensure compliance with the standards required, which fall under the Marine and Coastguard Agency. However, it is recognised that exploitation of workers occurs at sea.<sup>114</sup> The Modern Slavery Act 2015 introduced provisions specifically in relation to maritime enforcement.<sup>115</sup> In addition, NMW has an enforcement responsibility for ensuring NMW compliance for offshore activity,<sup>116</sup> such as work on ships, where reports of non-compliance have previously been reported,<sup>117</sup> and on wind farms, as reported by RMT.<sup>118</sup> The 2022-23 ODLME strategy also commented on the risks to workers employment rights that reflect the outcry over P&O Ferries’ refusal to follow legally defined redundancy procedures and the use of re-hire for lower cost migrant workers.<sup>119</sup>

80. If the powers of a future SEB are aligned within the UK, the remaining gap would be the ability to tackle labour exploitation in coastal waters, and other maritime jurisdictions. The NMW offshore responsibilities would transfer into a SEB along with NMW’s other responsibilities. Consequently, it is recommended that the powers of the SEB are fully aligned so that it may consider other labour market breaches that occur offshore up to and including forced labour.

### ***Use of Slavery and Trafficking Risk and Prevention Orders***

81. Slavery and Trafficking Risk and Prevention Orders (STROs and STPOs) are what are referred to as ancillary orders.<sup>120</sup> On conviction for a Modern Slavery Act 2015 offence, in England and Wales, a judge or magistrate can decide whether to impose a Slavery and Trafficking Prevention Orders (STPOs); the prosecutor can only remind the judge or magistrate that they have that power. Slavery and Trafficking Risk Orders

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<sup>111</sup> Council of Europe “[preventing and combating trafficking in human beings for the purpose of labour exploitation- Recommendation CM/Rec\(2022\)21 of the Committee of Ministers to member States](#)”, page 26

<sup>112</sup> [ILO C188- Work in Fishing Convention, 2007](#)

<sup>113</sup> Maritime and Coast Guard Agency [Living and working conditions under ILO 188](#), April 2021

<sup>114</sup> “[The Dark Underbelly of the Seas: Human Rights Abuses, Forced Labour, and Seafood Certifications](#)” (2023), Human Rights at Sea

<sup>115</sup> [Modern Slavery Act 2015, Part 3 Maritime Enforcement](#)

<sup>116</sup> [The National Minimum Wage \(Offshore Employment\) \(Amendment\) Order 2020](#)

<sup>117</sup> “[Union says minimum wage laws flouted amid offshore renewables ‘rush’](#)”, Energy Voice (2021)

<sup>118</sup> [RMT demands stronger workers’ rights on offshore wind farms](#) RMT (2023)

<sup>119</sup> ODLME [United Kingdom Labour Market Enforcement Strategy 2022/23](#) , page 28

<sup>120</sup> Sentencing Council [Ancillary Orders guidance](#)

(STROs) can be applied for by the investigating body.<sup>121</sup> Since 2020-21 the GLAA has made effective use of the orders securing 34 STROs and 3 STPOs.<sup>122 123</sup>

82. The GLAA is the only candidate body for inclusion in the SEB that has the authority to use these orders. However, this is limited to England and Wales, as the powers come from the extension of the GLAA powers in the Modern Slavery Act 2015, as amended by the Immigration Act 2016. Yet, similar sanctions also exist in the separate Scottish and Northern Irish legislation (see Appendix 7). If the SEB inherited the GLAA powers, and they were aligned throughout the UK, the use of STRO/STPOs could also be extended.

83. The GLAA has applied for and secured STROs during investigations for forced labour. It has been an effective tool for preventing offenders continuing to commit offences whilst the investigation continues. Conditions that have been specified in STROs include:

- prevention of organising any travel into or out of the UK
- having to surrender their passport
- not being allowed to travel outside the UK, unless approved, and with family
- requirement to notify police/GLAA if there are plans to travel
- not being allowed to hold the banking documents of workers.

84. Applications for STROs are not the same as prosecution cases. They are not initiated by the Crown Prosecution Service (CPS). In the cases where the GLAA has initiated applications, as a non-departmental public body (NDPB) and not classified as part of the “Crown” it has had to engage external solicitors to organise the application process. It is a cost that the SEB would also incur but could be avoided/reduced if, instead, it was able to use the Government Legal Service. This may be more likely if the SEB is created as an Executive Agency within the civil service (see “Logistical issues” section below).

### ***Alignment and use of the Labour Market Enforcement Undertakings and Orders throughout the UK***

85. The 2015 consultation requested opinions on the creation of an aggravated labour law breach,<sup>124</sup> for which there was broad support in the consultation responses. However, the Government response,<sup>125</sup> following advice from the Crown Prosecution

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<sup>121</sup> [Modern Slavery Act 2015, section 23 Slavery and trafficking risk orders](#)

<sup>122</sup> [GLAA Conviction totals](#) (including all forms of sanction applied)

<sup>123</sup> See press releases on examples of the use of the Orders: [22/12/2023 Two-year slavery orders for Lincolnshire car wash owners - GLAA](#); [24/11/2023 Owner of Leicestershire care provider handed slavery order - GLAA](#); [06/02/2023 Court imposes tough restrictions after Indian students ‘exploited’ in North Wales care homes - GLAA](#)

<sup>124</sup> Department for Business Innovation and Skills “[Tackling Exploitation in the Labour Market consultation](#)”, October 2015, See paragraphs 86 – 96

<sup>125</sup> Department for Business Innovation and Skills “[Tackling Exploitation in the Labour Market Government response](#)”, January 2016, See paragraphs 8-10 and 89-96.

Service (CPS), concluded that a new type of improvement notice could be introduced which would:

“...be simpler to prove a breach of the order than it would be to prove a person’s motivation or intention in committing the breach”

86. This led to the Labour Market Enforcement Undertaking and Labour Market Enforcement Orders introduced in the Immigration Act 2016,<sup>126</sup> and guidance<sup>127</sup> on how to use them. They are civil sanction alternatives to criminal prosecution, and to be lawfully used as an alternative there must be “prima facie” evidence of an offence that is prosecutable.

87. Each of the three bodies can use the Labour Market Enforcement Undertakings and Orders sanctions.<sup>128</sup> EAS can use them in England, Wales and Scotland; NMW can use them across the UK. The GLAA can operate them in relation to GLAA offences in England, Wales and Scotland, but not Northern Ireland (where its role remains a legislative enclave of the 2004 Act). The GLAA is also empowered to operate combination orders<sup>129</sup> in relation to multiple labour market offences, which might otherwise be dealt with by EAS or NMW separately creating more than one LMEU/O, but only in England and Wales.

#### **Example: How a LMEU may be used**

**“24. An unlicensed labour provider is identified.** A criminal investigation will occur. As part of that process an advisory letter is issued. It is designed to warn individuals and companies of the risks of illegal trading and that a licence is required. It is not a sanction itself. It will not prejudice any subsequent decision taken on whether it is appropriate to pursue a criminal sanction. If no application is made, and the company continues to trade it will be seen as aggravating the situation. ”

At the conclusion of the investigation various factors will be considered to determine the appropriate sanction:

- the extent of the period of the offence;
- whether other legislation has been breached;
- and/or whether there has been exploitation of workers

If the offender had operated without a licence for a short period (e.g. three months), and there had been no mistreatment of workers a LMEU may be offered.<sup>130</sup> The

<sup>126</sup> [Immigration Act 2016, Part 1, Chapter 1 Labour Market, section 14-30](#) Labour Market Enforcement Undertakings and Orders

<sup>127</sup> Home Office and Department for Business, Energy, and Industrial Strategy [Code of Practice on Labour Market Enforcement Undertakings and Orders](#), Nov 2019

<sup>128</sup> Ibid see paragraphs 47-48

<sup>129</sup> “Ibid see paragraph 49.

<sup>130</sup> [Immigration Act 2016, section 14 Power to request LME undertaking](#)

offender would have to agree to accept the LMEU otherwise other sanctions might be considered. The conditions on the LMEU could require the offender to apply for a licence within a set timescale (e.g. 1 month), ensuring that the offender's company was fully compliant with the licensing standards at the time of application.

If no application was received within the allotted timescale, and if the offender continued to trade illegally, a LMEO might be applied<sup>131</sup> for to enforce the LMEU.

*Note: This example has been produced based on information in the GLAA's Enforcement policy statement,<sup>132</sup> and it is recognised that this is not a definitive position, applied in all cases, where appropriate sanction approaches depend on aggravating or mitigating factors.*

88. In the above example, if the offender then did not comply with those requirements set on the LMEO the failure would be investigated, and a prosecution for a breach of the LMEO<sup>133</sup> could be instigated. The strength of the LMEU process is the control pressure that it can lever to achieve compliance, or leading to prosecution for a breach, if necessary. Comparatively, a simple warning previously used alone had no escalation process to reinforce it. The weakness of the LMEU/O process is the steps that must be gone through to reach the prosecution if the offender is non-compliant. Such circumstances may be more effectively dealt with by alternative sanctions proposed (see paras 98-102), or new prosecutable offences (see paras 123-127).

89. As all three bodies will become part of the SEB, the ability to use LMEUs/Os must therefore be aligned. This must also enable the ability to seek combination orders in Scotland as well (further analysis may be required to confirm if legislative change is required). In Northern Ireland, where only one of the candidate bodies can apply these sanctions (NMW), and one of the bodies does not operate (EAS), legislative change may also be required to enable the full use of the sanctions, including combined orders, and consider how EAI NI is affected, and whether it should be a candidate for inclusion in the SEB.

90. Between the implementation of the use of the LMEU/O process and the end of the financial year 2023/24, the GLAA implemented 40 LMEUs, and 1 LMEO,<sup>134</sup> which was on conviction for other offences, and not through a failure to comply with the LMEU.<sup>135</sup> There were no separately identified combination LMEUs. The ODLME Annual report 2019/20 provides the most recent published comparison on the use of LMEU/Os:<sup>136</sup>

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<sup>131</sup> [Immigration Act 2016, section 19\(2\)](#) Applications (for a LMEO)

<sup>132</sup> [GLAA Enforcement policy statement](#), May 2019

<sup>133</sup> [Immigration Act 2016, section 27 Offence](#) (of breaching a LMEO)

<sup>134</sup> [GLAA Convictions](#) (and other sanctions) totals

<sup>135</sup> GLAA press release "[Couple convicted of labour exploitation](#)", October 2018

<sup>136</sup> ODLME [United Kingdom Labour Market Enforcement Annual Report 2019/20](#), page 58

	2018/19	2019/20	2020/21	Total
<b>LMEUs</b>	<b>25</b>	<b>30</b>	<b>29</b>	<b>84</b>
HMRC NMW	7	26	24	57
GLAA	14	3	5	22
EAS	4	1	0	5
<b>LMEOs</b>	<b>1</b>	<b>3</b>	<b>0</b>	<b>4</b>
HMRC NMW	0	0	0	0
GLAA	1	0	0	1
EAS	0	3	0	3

Fig 2. Labour market enforcement undertakings and orders statistics

91. The EAS annual report 2020/21<sup>137</sup> identified that it has not issued any LMEUs within the reporting period but has secured two LMEOs. Both LMEOs were secured on prosecutions, not on non-compliance with a LMEU.

92. Details on the nature of LMEUs that may have been issued is limited because the enforcement bodies view them as confidential, as the undertakings are voluntary. They do not provide a financial sanction, although they could include a requirement to pay money owed to workers; if it was not paid there would not be a financial sanction but escalation to an application for LMEO. LMEUs are therefore not criminal enforcement outcomes and are not publicised. However, the imposition of an LMEO by a court for a failure to comply with an agreed LMEU could be publicised. Furthermore, if non-compliance with a LMEO occurred an investigation and prosecution for the offence of a breach of a LMEO could occur.<sup>138</sup>

93. The code of practice on the use of LMEU/Os provides examples of how they could be used.<sup>139</sup> The code (paragraph 1) states it is designed to deal with more serious offences using LMEUs. First time offenders, whose offending has limited impact on workers may be more likely to respond to an LMEU. The use of a LMEU for such offenders may result in more stringent monitoring, and the need to apply to the courts for a LMEO for non-compliance with the LMEU, all of which carry administrative burdens for the enforcement bodies and courts, through elongated processes. However, more serious and repeat offending is more likely to require a more severe approach to achieve restorative justice. Equally such situations may not be so serious to warrant prosecution. This requires the consideration of new sanctions to address such offending in the “middle ground” (see paras 98-102).

94. Paragraph 50 of the Code explains the government’s intention that there should only be one LMEU in force at a time with an employer.<sup>140</sup> However, this can only apply

<sup>137</sup> [Employment Agency Standards \(EAS\) Inspectorate Annual Report 2021 – 2022](#), page 8

<sup>138</sup> LMEO breach offence, section 27 [Immigration Act 2016 \(legislation.gov.uk\)](#)

<sup>139</sup> Home Office and Department for Business, Energy, and Industrial Strategy [Code of Practice on Labour Market Enforcement Undertakings and Orders](#), page 9-13: “3 LME Undertakings” and 14-15: “5. How the enforcement regime of LME undertakings and orders sits alongside existing sanctions already available to enforcing authorities”

<sup>140</sup> *Ibid*, para 50, page 16

in England and Wales because only the GLAA can operate combination LMEU/Os, and only in the jurisdiction of its wider powers. Consequently, if grounds for LMEUs are currently identified by each of the three bodies in Scotland the potential for three parallel LMEUs exists. The creation of the SEB, aligning enforcement in the devolved administrations, and enabling it to operate LMEUs covering all labour market offences would remove this anomaly, and address the original policy intention.

95. The code also points out that the LMEU regime can be used alongside existing sanctions, for example alongside an EAS warning, with a NMW underpayment, or requiring a business to apply for a GLAA licence. The extent to which combining a LMEU with other existing civil remedies has enhanced compliance is not known but requires further consideration. However, as a LMEU is offered as an alternative to a criminal offence it cannot be used as a civil sanction response to a civil non-compliance. Therefore, where the GLAA seeks to address a lapse in compliance by a licence holder, and places additional licence conditions on it, a LMEU could not also be imposed. The ability to deal with such situations by additional civil sanctions might create extra pressure on a business or individual to comply within set timescales, enhancing the use of LMEUs in a proportionate manner. This is considered in paragraph 102 and the associated example.

96. The LMEU regime may continue to have a place in a spectrum of sanction tools for lower-level offending. For example, where the GLAA has used them to address short periods of unlicensed activity, requiring licence application within a set period. Previously the GLAA could only issue a letter warning of the consequences of future offending, without any escalation route other than prosecution. LMEUs therefore create added pressure for compliance. Nonetheless, there needs to be changes that may enhance their use:

- Alignment of use throughout the UK
- Ability of the SEB to issue combined LMEUs covering all relevant labour market offences
- Consideration of use to address civil non-compliance by licensed gangmasters

97. Any changes need to be part of a package of measures, considering how they can be proportionately used, where they will lever an impact, or where other new sanctions, short of prosecution, could be deployed more effectively. This must also consider whether a need to apply for a LMEO, for LMEU non-compliance, or a prosecution for a breach of a LMEO, ought to be rolled into an aggravating labour market offence (see paras 123-127). The SEB will need to produce a comprehensive enforcement policy setting out how, and in what circumstances, different types of sanction at its disposal, individually, or in combination, will be used. Open and transparent guidance on the use of all sanctions can act as a deterrent and avoid unnecessary challenges to sanction decisions applied.

## Enabling the use of under-utilised sanctions

98. In an interview with the Observer newspaper, Angela Rayner stated that the SEB will be created “with ‘real teeth’ that has the power to prosecute and fine companies that breach the rights of their employees as part of its plans to strengthen workers’ rights.”<sup>141</sup>

99. The previous government’s response to the original SEB consultation concluded that:

“We will introduce new civil penalties for the breaches under the gangmasters licensing and employment agency standards regimes that result in wage arrears. Civil penalties will be used where a compliance notice has not been deemed appropriate, or if employers fail to comply with a compliance notice in time. In line with the consultation proposals, the penalties will be set at the same level as the NMW penalties ... ”<sup>142</sup>

100. NMW can currently impose fines. Section 19A<sup>143</sup> of the National Minimum Wages Act 1998 sets out the financial penalty that can be levied by the NMW team, applying a 200% multiplier, with a minimum penalty of £100 and a maximum of £20,000. However, the previous government’s failure to implement a SEB means that the commitment to introduce fines for non-compliance with EAS and GLAA regulatory requirements remains in abeyance.

101. In re-examining the potential to use fines, thinking must not be limited to the original proposal based on the current NMW penalty regime. Other sanctions already exist in primary legislation, but the de-regulatory environment under the previous government prevented their use. Civil sanctions were created in the Regulatory Enforcement and Sanctions Act 2008,<sup>144</sup> and associated guidance on implementation,<sup>145</sup> developed from the McCrory report,<sup>146</sup> which include:

- Fixed monetary penalties
- Discretionary requirements
  - Variable monetary penalties- set at a level that removes any financial gain from committing the offence and takes account of factors such as the gravity of the failure and the history of compliance.
  - Compliance notice – setting requirements for action to prevent future non-compliance

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<sup>141</sup> [Observer interview with Angela Rayner, 23/6/24](#)

<sup>143</sup> [National Minimum Wage Act 1998, section 19A Notices of underpayment: financial penalty](#)

<sup>144</sup> [Regulatory Enforcement and Sanctions Act 2008, Part 3 Civil sanctions](#)

<sup>145</sup> Department for Business Enterprise and Regulatory Reform: “[Regulatory Enforcement and Sanctions Act 2008: Guidance to the Act](#)”, July 2008 (see link under Part 4 Regulatory Burdens, “How might the provisions work in practice?” to the pdf for the guidance document), July 2008)

<sup>146</sup> “[Regulatory Justice: Making Sanctions Effective](#)”, 2006

- Restoration Notice – to return a situation to what it was before an offence (this could include repayment of deductions from pay irregularly made, and for offending short of modern slavery offences, may require a formal reparation framework, see paras 133-141)
- Stop Notices- to cease an activity that is causing harm, or one planned that might create harm
- Enforcement Undertakings (analogous, as proposed, to existing Labour Market Enforcement Undertakings)

102. Similarly to LMEUs, the above sanction types are civil sanction alternatives to criminal offences. However, consideration must be given to legislative change so that they could also be used to address civil non-compliances as well. A comprehensive enforcement policy setting out how each available sanction would be used proportionately would be required. An example of how such sanctions could be modelled, to act as a pressure for compliance, and simultaneously reduce some burdens on business, with proportionate financial sanctions, is set out below:

**Example: if civil fines for breaches of GLAA licensing Standards could be used**

Currently the GLAA does not have a power to issue fines. However, when it revokes a licence, the licence holder frequently appeals, incurring legal costs. During the appeal process they then re-apply incurring the full application and inspection cost. Although they will have had to correct the non-compliances leading to revocation it may also have impacted their future ability to operate. An alternative approach to introduce civil fines, rather than licence revocation in appropriate circumstances, may speed up the procedure but still carry a pressure to correct non-compliances. This proposal could use the licensing standards, and number of breaches as the basis for determining an appropriate fine, as set out in the example below:

**Example**

***Current position:***

- (a) Licence holder is inspected, and non-compliances are identified against standards that are not classed as critical (according to the standards document),<sup>147</sup> which may result in the addition to the licence of a maximum of three Additional Licence Conditions, requiring compliance within a period of time.
- (b) A licence holder with four or more non-critical non-compliances would normally be considered for revocation “without immediate effect”; and re-apply, with associated application costs.
- (c) A licence holder with one or more critical non-compliances would normally be revoked “without immediate effect” and re-apply.

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<sup>147</sup> “GLAA Licensing Standards” (2018)

- (d) A licence holder with one or more critical non-compliance, where the impact affects the health and welfare of workers (e.g. indicators of forced labour – section 3 of the standards) would normally be revoked “with immediate effect”; requiring immediate cessation of trading (even within an appeal period).

***Potential approach:***

If variable monetary penalties were introduced for use for civil breaches, and based on the current licensing bands, and their respective application and inspection fee levels, the above scenarios might be handled as follows:

- (a) No financial penalty, but could be accompanied by a compliance/restoration notice, setting time limits, which, if not complied with results in a fine as in (b)

- (b) Financial penalty equivalent to the application fee for the relevant Band<sup>148</sup> - a licence holder is fined for each standards failure up to a maximum of the application and inspection fee for the financial band the applicant was in – e.g. for the lowest band:

**Band D** licence holder 4 breaches x£400 (fee level) = £1600 fine; 8 breaches x£400 = £3200, therefore limited to £2250 (licence fee and inspection fee maximum)

**Band C** licence holder 4 x £1200 = £4800, 8 x £1200 = £9600, therefore limited to £3350 (licence fee and inspection fee maximum)

**Band B** licence holder 4 x £2000 = £8000, 8 x £2000 = £16000, therefore limited to £4400 (licence fee and inspection fee maximum)

**Band A** licence holder 4 x £2600 = £10400, 8 x £2600 = £20800, therefore limited to £5500 (licence fee and inspection fee maximum)

- (c) Applying the same formula as (b) but doubling the multiplier, e.g.: Band D licence holder 4 x£800 = £3200 fine; 8 x£400 = £6400, therefore limited to 2x £2250 (licence fee and inspection fee maximum) = £4500

- (d) Revoked as now

This approach might reduce overall financial burdens on a business that intends to bring itself back into compliance. It is a more proportionate response. It would potentially speed that process up, compared to the elapsed time when a revocation and appeal of a licence occurs, incurring additional legal fees for the business. It would also be likely to reduce costs incurred in defending appeals, with lower cost administrative processes. Current EAS standards could be aligned to such an approach, and there should be discretion for the SEB to continue to revoke in cases such as Scenario C where there were aggravating factors.

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<sup>148</sup> GLAA Licence fees and Bands

### ***Enhancing Transparency in Supply Chain compliance through sanctions***

103. If the proposal to enhance transparency in supply chains (TISC) enforcement through a penalty system is re-energised it could be allocated to the SEB to enforce, as indicated by the previous government. This could strengthen compliance by creating a deterrent. It would also, provide a proportionate regime creating a pressure for compliance, and encourage the exercise of due diligence over a business's supply chains.

104. A TISC penalty regime might be fixed rather than variable, being based on the sole non-compliance of a failure to produce a modern slavery statement to a set timescale. A banded approach, to determine the level of fine for the turnover of a company (e.g. between £36 million to £50 million, etc), but with higher fine levels per band might be appropriate. As compliance is improved over time, compliance requirements might also be ratcheted up, so that fines might be levied where scrutiny of statements produced identifies the absence of a due diligence examination of a company's own supply chain.

### ***Retention of fine revenue and reinvestment***

105. Under the Asset Recovery Incentivisation Scheme (ARIS) covered by the Proceeds of Crime Act 2002, agencies involved in a criminal investigation, which results in a financial investigation, can retain some of the recovered assets.<sup>149</sup> If the SEB is empowered to use financial penalties, consideration must be given to the similar retention of fines received, to be re-cycled to support its operational activity. Such amounts must not be considered as a basis to reduce financial allocations required to operate the SEB or be returned to central departmental or HM Treasury funds. Enforcement bodies face budgetary challenges, and this would be an effective way of increasing resources for enforcement bodies, without increasing state expenditure.

## **Inclusion of authority for new and other offences**

106. The changing nature of labour exploitation, and other forms of offences against workers, including what may be defined as wage theft, requires the SEB to be authorised to investigate other offences. That can include existing offences, such as in the Theft Act 1968 and the Fraud Act 2006, as well as the potential for new offences to be created. The authority to investigate other offences would then allow the SEB to lawfully use the existing investigative powers of the candidate bodies to their full extent.

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<sup>149</sup> See response to Parliamentary Question: [Asset Recovery Incentivisation Scheme, Question for Home Office](#), January 2022

107. The SEB will inherit the existing powers of the candidate bodies. These include the Police and Criminal Evidence Act 1984 (PACE) powers of the GLAA and the similar powers to address NMW offending in the devolved authorities. The SEB would also inherit the related powers to use directed surveillance in its investigations in accordance with the Regulation of Investigatory Powers Act 2000.<sup>150</sup> It would also be able to access information on mobile phone subscribers and acquisition of internet data under powers in the Investigatory Powers Act 2016.<sup>151</sup> Additionally, it would be able to operate the powers in the Proceeds of Crime Act (POCA) 2002<sup>152</sup> to seize assets identified as criminally derived, in relation to labour market offences established in the relevant POCA schedules to that Act.<sup>153</sup> The GLAA is currently authorised to use these powers.

108. This section therefore considers potential offences for inclusion within a widened set of offences under the SEB authority.

### ***False apprenticeship offence***

109. Unscrupulous employers operate fraudulent apprenticeships to lower wage costs. The current wage rates are:

	<b>21 and over</b>	<b>18 to 20</b>	<b>Under 18</b>	<b>Apprentice</b>
<b>April 2024</b>	£11.44	£8.60	£6.40	£6.40

*Fig 3. Minimum payment rates in the UK*

110. Work described as an apprenticeship can therefore pay lower rates. This can lead to schemes falsely described as apprenticeships.

111. The Immigration Act 2016 defined labour market offences as set out in section 3(3) of that Act.<sup>154</sup> In the same year, the Enterprise Act 2016 introduced an offence of operating a false apprenticeship.<sup>155</sup> It would streamline investigative practice if this offence, and any devolved administration’s similar legislative offences, were brought within the ambit of the SEB.

<sup>150</sup> [Regulation of Investigatory Powers Act 2000, section 27 Lawful surveillance, etc](#)

<sup>151</sup> [Investigatory Powers Act 2016](#)

<sup>152</sup> [Proceeds of Crime Act 2002](#)

<sup>153</sup> See Schedules [2 Lifestyle offences: England and Wales](#), [4 Lifestyle offences: Scotland](#), and [5 Lifestyle offences: Northern Ireland](#)

<sup>154</sup> [Immigration Act 2016, section 3 Non-compliance in the labour market etc: interpretation \(sub-section \(3\) Labour market offences\)](#)

<sup>155</sup> [Enterprise Act 2016, section 25 Only statutory apprenticeships to be described as apprenticeships](#)

## ***Online fraud offences***

112. The rise of online recruitment, and online fraudulent job adverts, as an example of the changing nature of work, has been commented on in successive ODLME strategy reports,<sup>156</sup> recommending continued action. This will fall within the remit of the SEB so further enhancements to its ability to tackle this growing issue, including upskilling inspectors in cyber tracing skills, will be required.

113. At their most extreme fraudulent adverts can be used to advertise non-existent jobs to de-fraud applicants of their funds. Such issues have been highlighted across the recruitment industry.<sup>157 158 159</sup> They can be more complex where the recruitment/adverts are recruiting from outside the UK.

114. A study currently being conducted for the International Organisation for Migration on the issue of online job frauds,<sup>160</sup> has identified both the complexity and difficulty of investigating such cases successfully unless the worker, work, and recruiter are all based in the same country. Frequently the recruiter/offender may be based in another country, requiring cross-border cooperation for successful investigation. If the authority to investigate online frauds is approved, it would assist liaison with other bodies outside the UK. This may also enhance preventative programmes to protect migrant workers from paying unlawful work finding fees or being simply deceived and defrauded.

115. Section 3 of the Online Safety Act 2023<sup>161</sup> is considered to bring job boards within the regulatory scope of the Act, requiring providers to exercise due diligence and remove identified fraudulent job adverts, with enforcement falling to Ofcom.<sup>162</sup> However, Schedule 1 of the Act would appear to remove practices that use SMS or other messenger platforms (such as the prevalent use of WhatsApp) to communicate with a potential applicant from the scope of Ofcom enforcement. Thus, exploitative recruitment, or straight-forward frauds appear to be excluded from enforcement under the Act.<sup>163</sup> This leaves a potential enforcement gap in relation to irregular labour market activity.

116. The Council of Europe's 2022 Recommendation on Forced Labour stated that:

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<sup>156</sup> See: [ODLME UK Labour Market Enforcement Strategy 2019-2020](#) , pages 57-59; [ODLME UK Labour Market Enforcement Strategy 21021-22](#) , pages 25-27; [United Kingdom Labour Market Enforcement Strategy 2022/23](#) , pages 25-26; [United Kingdom Labour Market Enforcement Strategy 2023/24](#) , page 4

<sup>157</sup> [Jobsaware website](#)

<sup>158</sup> [Institute of Job Aggregation website](#)

<sup>159</sup> Recruiter magazine "[INSTITUTE OF JOB AGGREGATORS HIGHLIGHTS THREATS TO ONLINE JOBSEEKING](#)"; June 2024

<sup>160</sup> A separate project currently being completed by the principal investigator for the UN International Organisation for Migration (IOM)

<sup>161</sup> [Online Safety Act 2023, section 3 "User-to-user service" and "search service"](#)

<sup>162</sup> Ofcom: "[Online safety rules: what you need to know](#)"; (Oct 2023) /

<sup>163</sup> [Online Safety Act 2023, Schedule 1, Exempt user-to-user services and search services.](#)

“In view of the increase in cases of recruitment through the Internet and social networks, labour inspectorates, law enforcement agencies, and other relevant authorities should develop digital expertise, increase their online presence and perform frequent controls on job advertisement websites. Training on electronic evidence should be made integral to the training curricula of law enforcement officers. Member States should invest in capacity building in the areas of Internet monitoring, cyber-patrols, undercover online investigations (cyber-infiltration), the use of open-source intelligence (OSINT) by specialised officers, and the use of automatic searching tools to analyse evidence.”<sup>164</sup>

117. However, such skills need to be underpinned by the authority to use them to tackle online fraudulent adverts. Internationally, labour inspectorates adopt a 20<sup>th</sup> century inspection framework that does not support regulation of an online 21<sup>st</sup> labour market,<sup>165</sup> in terms of cyber skills, and the ability to trace and identify website providers,<sup>166</sup> or identify mobile users from contact numbers provided in adverts. Where appropriate, the support from organisations such as the National Cyber Security Centre,<sup>167</sup> provides advice on how to take action to remove the operation of fraudulent adverts. Such activity might further enhance capability to tackle this emerging labour market issue. Action in this area is crucial because it is considered that the advancements in generative Artificial Intelligence<sup>168</sup> may enable more effective deceptions that may become more difficult to spot and trace.

118. Adverts identified as deceptive, resulting in recruitment and employment in the UK that is exploitative could result in investigation and prosecution under the forced labour offence in the Modern Slavery Act 2015. Adverts that are totally fraudulent, where the offender is in the UK, but the victim may be in another country, may fall in a legislative gap. Introducing an offence of online fraud would enable the SEB to use its investigative powers in these situations. Even if the offenders are outside the UK, information lawfully gained from the use of those powers could enable investigation and assist required cross-border collaboration<sup>169</sup>.

119. The existing fraud offences are “Fraud” (section 1 of the Fraud Act 2006)<sup>170</sup> in relation to “fraud by false representation” (section 2)<sup>171</sup> and “fraud by failing to

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<sup>164</sup> Council of Europe: “[Preventing and combating trafficking in human beings for the purpose of labour exploitation - Recommendation CM/Rec\(2022\)21](#) (2023)” page 27

<sup>165</sup> comment made to a member of authorship team by a representative of a labour market enforcement agency

<sup>166</sup> Websites such as <https://hostingchecker.com/>; <https://who.is/> (to check Domain registrant details); <https://archive.org/> (to identify previous versions of websites/webpages); and <https://www.shodan.io/> (using the IP address to identify other companies/services operating from the same server) can assist initial investigations in online/cyber cases, to which further specialist tools and expertise would need to be available.

<sup>167</sup> National Cyber Security Centre “[Takedown: removing malicious content to protect your brand](#)”

<sup>168</sup> See “[what are the risks of generative AI?](#)”

<sup>169</sup> This is likely to be enhanced when and if the UK becomes a signatory to the “Draft [United Nations convention against cybercrime Strengthening international cooperation for combating certain crimes committed by means of information and communications technology systems and for the sharing of evidence in electronic form of serious crimes](#)”; which was agreed in a [press release](#) on 9 August 2024.

<sup>170</sup> [Fraud Act 2006, section 1 Fraud](#)

<sup>171</sup> [Fraud Act 2006, section 2 Fraud by false representation](#)

disclose information” (section 3)<sup>172</sup>. The ability to reactively investigate online labour market frauds would also require an enhanced civil inspection remit, coupled with a revised power of entry, that effectively covers both physical entry and examination of virtual employment agencies/job websites to monitor compliance. Where fraud is suspected it would enable the SEB to use its powers to trace subscriber details for mobile phone numbers used in deceptive adverts, thereby enhancing the ability to investigate. If this authority was given, introducing a new offence, we expect it will have a longer-term preventative effect and protect migrant workers, who are particularly susceptible to these frauds.

### ***Withheld holiday pay***

120. Paragraph 12 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003<sup>173</sup> outlaws withholding or threatening to withhold the whole or any part of any payment in respect of any work done by the work-seeker. Holiday pay is part of wages as entitlement to it is earned by working. Therefore, employers who withhold holiday pay will contravene this regulation as equally as withholding a normal wage. GLAA licence standard 2.5<sup>174</sup> covers holiday pay, and compliance with ensuring a worker receives their holiday pay entitlement, or paid time off. This includes:

“Where a worker’s engagement is terminated during the course of a leave year a licence holder must give them payment in lieu of any accrued and unused holiday entitlement.”

121. On severing a relationship with the employment agency, the worker must receive their holiday entitlement, and their P45. Experience has shown that as agency workers may have irregular patterns or assignments, an unscrupulous agency employer may argue that the relationship is continuing, but the worker simply has not made themselves available, and that work would be available if they sought it. In those situations, the P45 is not issued, and the employer argues that they are holding the holiday pay until further contact with the worker who they do not consider has left the relationship. If the worker never returned, for example if they left the country, they would never receive their holiday pay. Such conduct is unethical but not an offence currently. However, it could be considered within the context of an aggravated offence, and to reduce the risk of such situations, a strict limit on a number of weeks that can reasonably elapse before payment must be made should be set.

122. Withholding of holiday pay could be considered as a factor in an aggravated labour offence, or even a dedicated wage theft offence.

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<sup>172</sup> [Fraud Act 2006, section 3 Fraud by failing to disclose information](#)

<sup>173</sup> [The Conduct of Employment Agencies and Employment Businesses Regulations 2003 \(legislation.gov.uk\), section 12 Prohibition on employment businesses withholding payment to work-seekers on certain grounds](#)

<sup>174</sup> [GLAA Licensing Standards, 2018](#)

### ***Aggravated labour offence***

123. The 2015 consultation proposed the introduction of an aggravated labour offence that could more effectively “deal with unscrupulous employers whose offences against their workers fall somewhere in the middle”<sup>175</sup> between matters dealt with through civil remedy and forced labour offences. That section of the consultation effectively summed up why an aggravated offence was necessary:

“... Their pattern of exploitative behaviour neither meets the threshold for Modern Slavery offences ... nor can it be dealt with satisfactorily through repeated use of existing penalties or offences. We need to make it easier for law enforcement to deal with such offenders in a way that breaks the pattern and, in so doing, reduces the risk of serial offenders subjecting their workers to more serious forms of exploitation.”<sup>176</sup>

124. As has been cited above the 2016 government response to the “Tackling Exploitation in the Labour Market” consultation decided on the implementation of an improvement notice approach on advice from CPS. An element of this conclusion rested on the view that “the behaviours that were identified as gaps could be remedied under existing legislation.” Instead, the Labour Market Enforcement Undertakings and Orders (LMEU/Os) system was created. 125. Whilst the LMEU approach can bring about an improvement in the compliance of some employers it is unlikely to have the necessary teeth to rapidly tackle persistent and repeat offenders, particularly if monitoring of compliance with the LMEU is required. Non-compliance with a LMEU requires an application for a LMEO, and a failure to comply with the Order requires a criminal investigation to prove the Breach Offence.<sup>177</sup> Therefore, though it is a useful tool in an armoury of enforcement sanctions, it is unlikely to act as an effective deterrent for serious offending which is short of forced labour. The introduction of a new aggravated labour offence could then enable the SEB to consider prosecution, or a civil sanction alternative, which may carry a monetary penalty, such as the sanctions discussed above from the Regulatory Enforcement and Sanctions Act 2008, to ensure a proportionate and effective sanction outcome.

126. The changes in the GLAA’s remit in 2016, introducing powers under the Police and Criminal Evidence Act 1984, enabled it to investigate any offence listed in section 3(3) of the Immigration Act 2016. In practice, if an alleged offence contrary to the NMW Act was referred to it and did not suggest other labour market offences had occurred, it would refer that case to NMW to address (conversely if NMW or EAS identified allegations of forced labour they would be passed to the GLAA). Furthermore, if GLAA had received a case that identified a combination of offences that would normally be

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<sup>175</sup> Department for Business innovation and Skills “[Tackling exploitation in the labour market consultation](#)” paras 89- 96

<sup>176</sup> Ibid. para 90

<sup>177</sup> see the section 27 Offence

separately investigated by NMW and EAS, where they would do so under civil not criminal powers, it would also be passed back to those bodies. So, it would seem disproportionate for the GLAA to use its PACE powers or consider prosecution where the other two bodies would not. Such situations, typified in Operation Tacit also, meant that referrals did not meet a threshold where PACE powers could be used lawfully.

127. The above situation could be addressed if the proposal for an aggravated labour offence was re-examined. The benefit of such an offence would be that a future SEB could use its PACE powers to investigate the allegations in cases where evidence did not suggest forced labour was occurring. If the SEB's authority to operate within the devolved administrations, as proposed above, was implemented, it could take this approach throughout the UK (under the parallel, but different, powers available in those jurisdictions). The existence of other labour market offences, which are not part of the list in section 3(3) of the Immigration Act 2016 (e.g. fraudulent apprenticeship offence), together with the constantly evolving nature of offending, affecting workers in an increasingly online world, suggests an innovative approach through a new offence, must be considered. It must be developed to be able to flexibly address future offence types that may emerge in the labour market. If a new aggravated labour offence is introduced, it would potentially be most applicable where workers had suffered financial loss which requires reparation through a compensation framework. In drafting an appropriately worded offence it should be classed as an offence covered by the Proceeds of Crime Act 2002,<sup>178</sup> coupled with similar conditions to those established in section 8 of the Modern Slavery Act 2015<sup>179</sup> for all jurisdictions in the UK.

**Example: applying an aggravated labour offence**

Information might be received by the SEB that suggests workers have been recruited through fraudulent vacancy adverts, deceiving the applicants of the true nature of the work, accommodation, wages, resulting in withholding of wages, and irregular deductions, but not constituting forced labour.

Together the nature of the information received may be considered to constitute an aggravated labour offence due to the combination of fraud, and control of wages. This would enable the SEB to utilise the powers it will inherit, to use surveillance where required to build an evidence picture of the offending and operate arrest when required. The extent of criminally derived assets, impacting the workers adversely, would potentially enable financial investigations under the Proceeds of

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<sup>178</sup> An amendment to [Schedules 2, 4 and 5](#) to the Proceeds of Crime Act 2002 would be required (Lifestyle offences in England and Wales, Scotland, Northern Ireland, respectively)

<sup>179</sup> [Modern Slavery Act 2015 section 8 Power to make slavery and trafficking reparation orders](#) - this would enable reparation order to be made in circumstances where prosecutions occurred for an offence classed as one covered by the Proceeds of Crime Act 2002

Crime Act 2002 to inform the prosecution of the quantum of those assets, for recovery.

Such an offence would potentially be triable in a Magistrates or Crown court (“triable either way”) dependant on the extent and impact of offending. Offending at the lower end of severity could be dealt with by the imposition of civil sanctions alternatives to prosecution, if the right type of civil sanctions were made available to the SEB, including ordering reparation. Where prosecution is appropriate maximum sentences could be in line with certain existing offences (e.g. section 12 of the Gangmasters (Licensing) Act 2004). This would provide a maximum of 6 months imprisonment, or a fine, or both for summary offences tried in a Magistrate’s court, or a maximum of 10 years imprisonment, or a fine, or both, if tried on indictment in a Crown court.

### ***Embargoing of Hot Goods***

128. The original consultation on the creation of the SEB considered ideas that had been in the 2018/19 ODLME strategy.<sup>180</sup> This included embargoing of hot goods,<sup>181</sup> but only limited to goods produced in the UK. The government response declined to include embargoes of hot goods within the proposed scope of the SEB.<sup>182</sup> . However, a recent Court of Appeal hearing identified that even though there are no embargoes on “hot goods” a body that has powers under the Proceeds of Crime Act 2002 might have to take action in certain situations.

129. The Court of Appeal case, *World Uyghur Congress v National Crime Agency*,<sup>183</sup> found that the UK National Crime Agency’s (NCA) decision to refuse to investigate consignments of cotton goods imported from the Xinjiang Uyghur Autonomous Region of China (XUAR), that were said to have been produced by slave labour, was unlawful. The Court overturned a 2023 High Court decision which raised serious implications for the UK’s framework for investigating money laundering and recovering the proceeds of crime under the UK’s Proceeds of Crime Act 2002 (POCA).<sup>184</sup>

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<sup>180</sup> ODLME [United Kingdom Labour Market Enforcement Strategy 2018/19](#) page 88-90

<sup>181</sup> Department for Business Energy and Industrial Strategy “[Good Work Plan: establishing a new Single Enforcement Body for employment rights Consultation](#)”; October 2019 [single-enforcement-body-employment-rights-consultation.pdf \(publishing.service.gov.uk\)](#) , page 40. “Hot Goods” were explained in the 2019 ODLME strategy: “The concept of hot goods has been pursued in the USA through the Fair Labor Standards Act 1938. These provisions allow for the restriction of the shipment of certain goods that have been produced in violation of child labour, minimum wage and overtime regulations”, see page 88- <sup>181</sup> ODLME [United Kingdom Labour Market Enforcement Strategy 2018/19](#) . It frequently refers to goods produced in supply chains tainted by modern slavery.

<sup>182</sup> Department for Business, Energy, and Industrial Strategy “[Establishing a new single enforcement body for employment rights Government response](#)”; June 2021 page 21-22

<sup>183</sup> [Court of Appeal judgement](#)

<sup>184</sup> <https://www.kingsleynapley.co.uk/our-news/press-releases/court-of-appeal-decision-r-on-the-application-of-world-uyghur-congress-v-national-crime-agency> .

130. As summarised in the Law Gazette (28/06/2024),<sup>185</sup> the court held that the NCA had misinterpreted section 329(2) (c) "Acquisition, use and possession."<sup>186</sup> The NCA's view that "where the importer is paying market value for the purchased goods they would not be tainted as a result of the operation of [section 329] "was concluded to be "wrong in law", and that an investigation into proceeds of crime can commence before specific criminal property or recoverable property is identified."

131. As the SEB will inherit the GLAA's existing powers and obligations under the Proceeds of Crime Act 2002<sup>187</sup> the potential for such future cases to be undertaken by the SEB must be considered.

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<sup>185</sup> ['Watershed moment' as Court of Appeal find companies trading in forced labour goods risk prosecution | Law Gazette](#)

<sup>186</sup> [Proceeds of Crime Act 2002, section 329 Acquisition, use and possession](#)

<sup>187</sup> [The Proceeds of Crime Act 2002 \(References to Financial Investigators\) Order 2009 \(legislation.gov.uk\), Schedule 1](#)

## Other Policy Considerations

132. Creating a SEB will enable other labour market policy issues that affect workers to be considered. Below we cite two areas: access to remedy- compensation, and employment status.

### Access to remedy - compensation

133. The 2022, Council of Europe recommendation on forced labour commented on the need for state compensation schemes for workers/victims of modern slavery:

“Even though it is the trafficker who should compensate the victim, in practice there is rarely full compensation because the trafficker has not been found, has disappeared or has declared him/herself bankrupt. In order to safeguard the right to compensation when the perpetrator is unable to pay compensation to the trafficked person, member States should take steps to guarantee compensation of victims by developing accessible procedures for state compensation and the enforcement of compensation claims by the state. State compensation schemes should provide an equitable framework which applies a consistent method to establish an appropriate level of state compensation, and which operates in a manner that does not require expensive legal representation, to prevent that legal costs are deducted from compensation awards. Member States should also consider introducing a system of advance payment of compensation to victims by the State and recovering the money from the perpetrator.”<sup>188</sup>

134. In the case of *Komives v Hick Lane*<sup>189</sup> trafficked Hungarian workers sought compensation for their ill treatment by attempting to trigger payment through the Employer’s Liability insurance of their employer. The Employer/offender had gone into administration so no claim could be initiated against it. In the Judgement, which did not find in favour of the trafficked workers, it was remarked that:

“41 ... the real issue for the appellants in this case is that limitations in the Criminal Injuries Compensation Scheme have resulted in their being unable to recover from the mental and physical injury caused by the crimes of their handlers...”

135. The issue of compensation, and barriers in the Criminal Injuries Compensation Scheme (CICS), was highlighted in a policy paper<sup>190</sup> produced by the previous Independent Anti-Slavery Commissioner, Dame Sara Thornton, reflecting the UK’s

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<sup>188</sup> Council of Europe: “[Preventing and combating trafficking in human beings for the purpose of labour exploitation - Recommendation CM/Rec\(2022\)21](#) (2023)” page 22

<sup>189</sup> [Komives & Anor v Hick Lane Bedding Ltd & Anor](#) ([2021] EWHC 3139 (QB) | England and Wales High Court (Queen’s Bench Division) | Judgment | Law | CaseMine, see link at bottom of the article for the full judgement and para 41 specifically)

<sup>190</sup> “[IASC policy paper: Access to compensation and reparation for survivors of trafficking](#),” (April 2022)

international obligations under Article 15(4) of the Council of Europe Convention on Action against Trafficking in Human Beings 2005 (ECAT).<sup>191</sup> Similar concerns had been raised earlier by the charity Anti Trafficking and Labour Exploitation Unit(ATLEU)<sup>192</sup> , linking back to the Leigh Day case of *Galdikas v DJ Houghton*.<sup>193</sup>

136. In the third inspection report on the UK by the Council of Europe’s GRETA committee concerns were raised about access to compensation:

“GRETA notes that the non-inclusion of human trafficking in the list of “crimes of violence” under the CICS has a significant impact on the victims’ access to state compensation, in particular with regard to the burden of proof and the need to demonstrate a physical injury or a diagnosable psychiatric injury. A victim who has been severely exploited, but is not able to demonstrate the injury, will not receive an award.”<sup>194</sup>

137. In its recommendations it included:

“GRETA urges the UK authorities to make additional efforts to guarantee effective access to compensation for victims of trafficking ... ensuring that victims of labour exploitation have accessible remedies for obtaining more than two years owed in National Minimum Wage; ... enabling victims of trafficking to effectively exercise their right to state compensation within reasonable time, by ensuring their access to legal aid when submitting applications to the CICS ...”<sup>195</sup>

138. The absence of clear access to compensation in appropriate cases results in situations where:

“Civil claims for compensation are often lengthy and complex, and effectively rely on the victim being legally represented. Costs in these cases can be a significant barrier, and it can be difficult for victims to recover the full amount of their loss.”<sup>196</sup>

139. In considering cases that have been brought, and the conditions endured by exploited workers, often featuring wage theft as well as mental and physical harm, a compensation scheme framework must be introduced to provide a consistent method of calculating appropriate compensation where it cannot be secured from the offenders. This would address concerns raised by the Council of Europe, regarding a failure by the UK to meet its commitments to Article 15 of the Convention<sup>197</sup> and would

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<sup>191</sup> HM Government, Treaty Series No 37: “[Council of Europe Convention on Action against Trafficking in Human Beings](#), May 2005” (entered into force in the UK April 2009)

<sup>192</sup> ATLEU: “[Survivors of trafficking and the Criminal Injuries Compensation Scheme](#),” (Nov 2020)

<sup>193</sup> FLEX “[Access to compensation for victims of human trafficking](#),” July 2016)

<sup>194</sup> Council of Europe GRETA [Evaluation Report United Kingdom, third evaluation round, “Access to justice and effective remedies for victims of trafficking in human beings”](#) para 127

<sup>195</sup> *Ibid*, paragraph 132

<sup>196</sup> *Ibid*, paragraph 117

<sup>197</sup> *Ibid* paragraph 132

also address recommendations from the International Labour Organisation.<sup>198</sup> It should also assist in avoiding costly litigation on behalf of workers that could seek unlimited damages, dependant on the claims raised, from Government.

140. Section 8 of the Modern Slavery Act 2015<sup>199</sup> and section 10<sup>200</sup> and schedule 2<sup>201</sup> of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 make provision for compensation to victims where there have been prosecutions for modern slavery offences. Similar provision may apply in Scotland under different Scottish legislation.<sup>202</sup> However, in each case there is a potential high bar to reach in such cases, particularly where offenders may have absconded. Similar support may not be applicable in cases that do not meet the threshold for modern slavery prosecutions but represent significant labour exploitation.

141. A compensation scheme that addressed such situations and prevented individuals falling through the cracks, as in the Komives case (see para 134 above) may be appropriate. Whilst lower reparation amounts, for withheld pay, etc, could be enabled through additional civil sanctions (see “enabling the use of underutilised sanctions” above, paras 98-102), remedying the impact of serious offending, mistreatment of workers could benefit from clear legislation on the circumstances in which new reparation orders might be appropriate throughout the UK. Further guidance to judges to ensure reparation to victims is always considered in modern slavery prosecutions may be required. In other prosecutions for labour exploitation related offences, guidance and awareness should be provided to judges to refer victims to a separate compensation scheme, if created. Clarification should also be developed in relation to payments that can be covered by the Criminal Injuries Compensation Authority, and the threshold of proof in labour exploitation cases.

## Employment status

142. Enforcement bodies have to make employment status determinations before they can uphold some worker rights. The Labour government has committed to carrying out a review of employment status. It is important that this review considers the role of enforcement agencies in determining employment status, the potential issues for workers if enforcement bodies reach the wrong conclusions, and how refined guidance on employment status can help reach more accurate determinations. This is

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<sup>198</sup> ILO [R203- Forced Labour \(Supplementary Measures\) Recommendation, 2014 \(No. 203\), in support of the 2014 Protocol to the 1930 Convention on Forced Labour](#), paragraph 12.

<sup>199</sup> [Modern Slavery Act 2015, section 8 Power to make slavery and trafficking reparation orders](#) t

<sup>200</sup> [Human Trafficking and Exploitation \(Criminal Justice and Support for Victims\) Act \(Northern Ireland\) 2015, section 10 Slavery and trafficking reparation orders](#)

<sup>201</sup> [Human Trafficking and Exploitation \(Criminal Justice and Support for Victims\) Act \(Northern Ireland\) 2015, Schedule 2 SLAVERY AND TRAFFICKING REPARATION ORDERS](#)

<sup>202</sup> See [section 253C \(Restitution order, fine and compensation order: order of preference\) of the Victims and Witnesses \(Scotland\) Act 2014](#), which may provide support

crucial to support effective enforcement against those who abuse the labour market by constructing false employment situations (e.g. bogus self-employment).

## Logistical issues for the SEB

143. In addition to a review of the powers, sanctions and enforcement approach of the new SEB there must also be a consideration of logistical issues on how it will be created, its status, and position within the wider global labour market landscape, given the continuing need to employ migrant workers. This section considers those issues.

## Options for the legal status of the SEB

144. The staff of the three candidate bodies sit within different organisational structures. In bringing the bodies together an analysis of the strengths and risks of each organisational model, legal status, and the process for the creation of a new body, will be required.

145. EAS staff are civil servants within a ministerial department; NMW staff are civil servants within the non-ministerial department of HMRC; and GLAA staff are public servants in a non-departmental public body (NDPB)<sup>203</sup> (NB: As a NDPB the GLAA is due to be reviewed under the public bodies review process in 2024/25).<sup>204</sup>

146. A key decision will be whether the SEB should be a NDPB or an Executive Agency within government. If it is to be the former, civil servants will have to transfer out to become public servants, and if the latter, GLAA's staff, as public servants, will transfer to become civil servants. The government will have to be mindful of Cabinet Office rules that guide transfers within the public sector (the COSoP rules).<sup>205</sup>

147. Any transfer will require a comparison of the terms and conditions, and grade of staff carrying out similar tasks. This should include a plan for alignment of terms and conditions where these may be different, and, where appropriate, a review of the grading of staff conducting specific tasks, and any equal pay issues that may arise, together with a balanced management structure. Furthermore, it is understood that an unknown but potentially significant number of NMW staff are tax inspector trained and may want to retain that expertise within HMRC. There is a potential risk that many of those staff may wish to remain in their existing parent department. The COSoP rules (paragraph 22, second bullet point) explain that any transfer process will "make every effort to provide an opportunity for those who wish to stay with or return to their original department to do so".

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<sup>203</sup> [Gangmaster \(Licensing\) Act 20024, section 1 sub-section \(4\)](#)

<sup>204</sup> [Public Bodies review programme 2024/25](#) – see under Home Office. The outcomes of such reviews can lead to decisions to change the delivery model, including abolition, and the option to "bring in-house" and "merge with another body," elements of which will be pertinent to transfers to a SEB

<sup>205</sup> [Cabinet Office – Staff Transfers in the Public Sector, Statement of Practice \(January 2000, revised 2013\)](#) on Gov.UK at: "[Staff Transfer in the Public Sector](#)" webpage.

148. It will be essential to prevent a “brain drain” of staff who do not want to transfer into the SEB. Otherwise, the SEB might be financially resourced to carry out its role, but not have the staff to do so. This risk might be mitigated if the SEB is created as an executive agency within the civil service, potentially also enabling cross-departmental secondments, and the GLAA staff transfer<sup>206</sup> to the SEB and change their legal status to civil servants. The smaller number of staff transferring into the civil service, rather than a higher number transferring out, may also be a simpler process to complete.

149. Any mergers, restructures, or closures of arm’s length bodies, of which NDPBs are a type, may require Cabinet Office and/or HM Treasury approval.

150. If the SEB is created as an executive agency, dependant on the governance model<sup>207</sup> applied, it may also streamline accountability and reporting. There are two alternative executive agency governance models<sup>208</sup>

<b>Model 1 – Executive Agency operates closer to home department, assurance provided by home department's internal systems</b>	<b>Model 2 – Executive Agency has greater level of independence from home department, assurance provided by non-executive board members</b>
<p>If an Executive Agency operates either close to its home department or is considered by its home department to be too small to warrant a full Management Board with non-executive directors, then the home department’s audit and risk committee should provide the assurance function for the agency.</p> <p>In this situation, the Executive Agency does not require non-executive board members on its Management Board. Instead it would be led by an executive board, headed by the Chief Executive.</p>	<p>Where an Executive Agency needs a greater level of independence from its home department in order to carry out its functions effectively, or is considered by its home department to be of a sufficient size and importance to require independent assurance, the agency should be led by a Management Board, headed up by a non-executive Chair, and with executive and non-executive board members.</p>

Fig 4: Models of Executive Agencies taken from [Public Bodies Handbook Part 3: Executive Agencies: A guide for Departments](#)

151. If the operational model chosen for the SEB is an executive agency the governance structure in Model 2 would most simply meet the Labour Government’s commitment in “Labour’s Plan to Make Work Pay” to provide Trades Union representation.<sup>209</sup> In both models executive agencies could establish sub-committees (no further information is provided to suggest the structure, membership and function of sub-committees, but they are at least likely to include an Audit and Risk function). Ultimately the type of executive agency determined is informed by the level of independence that the body and the sponsor department require. Further guidance on

<sup>206</sup> Unlike civil servants seeking to remain in a department rather than transfer, GLAA staff are not part of a department, therefore cannot remain in it, and must transfer as the NDPB would be abolished in that scenario

<sup>207</sup> [Public Bodies Handbook Part 3: Executive Agencies: A guide for Departments](#), See comparative governance diagrams, page 7.

<sup>208</sup> Ibid, page 6-7

<sup>209</sup> “We will establish a Single Enforcement Body, with trade union and TUC representation, to ensure greater coordination in the face of complex enforcement challenges;” page 20- [Labour’s plan to make work pay](#)

Government approach to the creation of new bodies, and their different characteristics is contained in the Public Bodies Handbook parts 1 – 3.<sup>210</sup>

## Role of the ODLME

152. In our opinion the ODLME would no longer be needed following the creation of the SEB. Logically, as the three bodies that were under the oversight of the ODLME will be combined there does not appear to be a justification for a separate oversight body for a single organisation. Comparatively, other existing oversight bodies, particularly those considering performance and effective, lawful, use of investigative powers, have oversight over more, and often larger, bodies<sup>211</sup>. We consider this position is further reinforced if the SEB is an executive agency as it will report directly into government and ministers; there would be more direct accountability, and shorter reporting chains. Relevant functions of the ODLME, providing strategic analysis of the labour market, would therefore need to transfer into an analytical centre within the SEB. The removal of the ODLME function would require dissolution of the clauses within the Immigration Act 2016, which created it. Such consequential legislative amendments could be implemented through the Employment Rights Bill.

## Where should the SEB report into government?

153. Given the delays created in ODLME approvals processes a move to a single Secretary of State reporting chain might be appropriate. The GLAA originally reported through the Department for Environment, Food & Agriculture (Defra), due to its history and regulation of agriculture and shellfish. With a widening of its remit, and relationship with the modern slavery agenda it was transferred to come under the sponsorship of the Home Office.

154. The GLAA's licensing conditions mirror the Employment Conduct regulations, which are under the remit of the Department for Business and Trade's (DBT) labour market policy team. This area of policy in DBT also sets the national minimum wage policy where the operational delivery of the enforcement of it is "outsourced" to HMRC (a non-ministerial department).

155. As DBT is responsible for labour market policy it would appear to be the appropriate home for the SEB. If the SEB is established as an executive agency, to protect such functions, and its forced labour remit and use of wider police powers, its governance structure must include representation from the Home Office. Dependant

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<sup>210</sup> Part 1 [Classification Of Public Bodies: Guidance For Departments](#);  
Part 2 [The Approvals Process for the Creation of New Arm's-Length Bodies: Guidance for Departments](#);  
Part 3 [Executive Agencies: A Guide for Departments](#)

<sup>211</sup> E.g. [His Majesty's Inspectorate of Constabulary and Fire & Rescue Services](#), [Independent Office for Police Conduct](#), [Investigatory Powers Commissioner's Office](#), [Independent Chief Inspector of Borders and Immigration](#), [His Majesty's Crown Prosecution Inspectorate](#) [Independent Anti-Slavery Commissioner \(see Modern Slavery Act 2015, Schedule 3\)](#)

on the alignment of powers we propose above that may need to also include representatives from the devolved administrations.

## Operational structure

156. This will ultimately be a matter for the future SEB senior management team to determine. However, it is unlikely that there would be an immediate amalgamation of inspectors into a single multi-skilled inspectorate, and this is likely to be a progressive activity over a longer period. Additionally, the SEB structure will have to consider how to incorporate functions for activities that may not have been part of the functions of the candidate bodies. Noting the background required for the recruitment of the future Border Security Commander<sup>212</sup> the combination of functions and powers may require a similar approach to secure a CEO/Director with a thorough understanding of labour market enforcement and criminal investigative techniques. However, structurally, a potential first step could be the development of regional operational management structures so that different inspectors work more closely rather than in silos but under the umbrella brand of the SEB.

157. For the new organisation to “hit the ground running” there are some potential quick wins that could be considered. These include establishing certain key functional units and to consider the development of a shadow organisation to enable rapid development whilst the Employment Rights Bill progresses and before the SEB is formally established.<sup>213</sup> These include:

- What synergies exist between EAS and the GLAA compliance function for potential early amalgamation
- Establishing a specialised unit for the use of criminal investigation powers (e.g. PACE in England and Wales), which might have the responsibility for serious NMW criminal investigation also
- Pooling of all information held within one intelligence database for more effective strategic trend analysis, and informing case management decisions, as well as information exchange with other enforcement bodies
- A central sanctions unit for the determination and processing of any sanction below referral to prosecution authorities
- Exploring whether other operational administrative functions – licensing, control of underpayments, chasing payment of Employment Tribunal awards, potentially TISC fines could be managed together
- An education, promotional awareness campaigns, and prevention unit.

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<sup>212</sup> [Home Secretary launches new Border Security Command to tackle small boats gangs | The Independent](#)

<sup>213</sup> i.e. after an Act has received Royal Assent, and before the required secondary legislation to “commence” the relevant clauses of the legislation that legally create the SEB are passed (secondary legislation through statutory instruments normally is enacted through “common commencement dates” in October or April.

## Resources

158. Civil society organisations, unions, international organisations that review the UK, have repeatedly demanded additional funding for state enforcement, often using the ILO standard of inspectors per head of population as a benchmark.<sup>214</sup> New areas of activity and focus that may be added to the role of the SEB, beyond those that currently exist and transfer, will bring with them additional resourcing requirements. The initial challenge for the SEB will be to transfer all staff into a single body, have a clear plan for any alignment of different terms and conditions of its staff, and maintain operational delivery of existing functions.

159. Transformation into a unified organisation will take time. Consequently, an incremental approach to its development and adoption of new functions is needed. A big-bang approach would be potentially high-risk and adversely impact performance, particularly if a significant activity might be the recruitment of additional staff, which is resource intensive. As an example, when the Security Industry Authority commenced licensing it sub-divided the security sector, taking on door supervisor licensing before considering the implementation of licensing of vehicle immobilisers, so that its systems could manage the volume of work it had to process.

160. This same principle must apply to new areas of activity, and any extension of the licensing regime. A thorough examination of business models, existing regulatory overlaps, and volumes of affected businesses and workers, needs to be undertaken and understood to establish the right processes, from which to assess the necessary additional level of resources required for new responsibilities. This would be assisted if the SEB was also allowed to retain any money from fines from new sanctions, and if it was allowed to operate an enforcement and compliance costs recovery model.<sup>215</sup>

## Training

161. Training standards for labour market inspectors must be harmonised, ensuring that all inspectors undergo the same level of robust, comprehensive training. A thorough understanding of how to assess whether an employment business is compliant with labour market requirements, and how to identify situations of forced labour is essential for all inspectors. The ability to provide effective, knowledgeable, skilled enforcement, and education to prevent abuse, requires a comprehensive training programme, including the need to refresh and update existing staff on legislative and procedural changes.

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<sup>214</sup> [ILO calls for strengthening labour inspection worldwide](#) - the ILO benchmark ratio is one inspector per 10000 workers. In the UK, it is recognised that the staff complement of HSE Inspectors, who will not be part of a SEB, would contribute to the UK's overall ratio of "labour inspectors" to workers.

<sup>215</sup> This might consider an approach similar to the HSE's Fee For Intervention (FFI) model - "[What is FFI?](#)"

162. It is understood that the training for NMW Inspectors is approximately 18 months before they are considered fully competent. For the GLAA, training of new compliance staff provided a two-week introduction, six-to-eight-week tutor period, and ongoing assessment during probation (three to six months). The current compliance inspectors also completed the "SA8000 Lead Auditor in Social Systems" qualification.<sup>216</sup> Enforcement officers, who would apply police powers, have historically been ex-police officers, with knowledge of the powers they would utilise. Whilst enforcement officers needed to understand the compliance issues, the additional enforcement training required for criminal investigation was not immediately necessary due to previous experience of recruits. However, in future, to develop new enforcement officers, who do not come from a police background, there would need to be approved accreditation routes<sup>217</sup>. The length of training for new EAS inspectors is not known, but the above information indicates that a comprehensive training programme will be required for all new staff, with rough estimates of training times.

163. Additionally, as recruitment methods, and ways of work change in the 21<sup>st</sup> Century, inspectors need to be upskilled in a range of cyber related investigative tools and techniques. This would support activities such as tracing agencies and individuals recruiting online (where such adverts may be false in terms of conditions/role, or not exist at all), and understanding how future use of AI may complicate identification of offences and evidence gathering.

## IT

164. Whatever legal status is decided upon the new SEB will need to be properly resourced, not just in terms of staffing, but other logistical and support functions. If the SEB is an executive agency some of its corporate service functions could potentially be provided by the parent department, saving on economies of scale, redeploying such savings to the funding of frontline posts. Other costs, such as IT, are likely to be a significant transformation and implementation cost and will be critical to the successful creation of a SEB.

165. It is understood that EAS records have historically been kept in Microsoft systems such as Excel, NMW has bespoke case management systems built on HMRC platforms in-house, and GLAA uses commercial off the shelf (COTS) products for intelligence and case management, as well as adapted products for licensing. There may be current

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<sup>216</sup> [Social Systems Auditor/Lead Auditor Training Course \(COI and IRCA Certified\) | SGS United Kingdom](#)

<sup>217</sup> [Professionalising investigations programme \(PIP\) level 1 and 2 curricula | College of Policing](#). NB: to reach PIP level 2 successful completion of a National Investigation Exam (NIE) is required. As this covers criminal justice procedures and offences beyond those applicable within the labour market alternative approaches could be considered. It is understood that the Security Industry Authority were considering the development of a tailored NIE approach, which would need College of Policing accreditation, and potentially equate to "PIP1+ ". It is not known whether this has been implemented or is still in development

programmes independently being looked at by each body for future IT enhancements and efficiencies.

166. An early priority for a SEB programme would be to ensure that any such programmes are coordinated, and planned deliverables would benefit all three bodies. This would also need to consider whether any existing or planned developments duplicate functionality, which may need to be paused, revised, or halted, to ensure IT expenditure is beneficial. One option that may be considered is whether NMW requirements could remain on HMRC IT platforms, with other SEB functionality and systems also hosted on HMRC platforms, appropriately firewalled from other HMRC data. If permissible, this would avoid the potential significant re-development costs if NMW systems otherwise needed to be moved from HMRC. If NMW require continued access to certain HMRC data sets, which may also assist wider SEB functionality (e.g. the real time information updates on individuals' employment and wage records), the use of which would need to be specified in SEB information exchange legislation, an option would be to assess whether this could be maintained on HMRC platforms applying a shared- service type approach. If so, this may be more likely to be permissible if the SEB was an executive agency, and effectively all its staff were civil servants.

## **An independent website**

167. The position of the GLAA website, and how the SEB will operate must be considered. Information on the role of EAS and NMW is primarily on GOV.UK whereas GLAA continues to operate an independent website, providing easy access to information. It now includes links to information on EAS and NMW to assist users to find the information they require easily.<sup>218</sup> It is recommended that the SEB is allowed to operate an independent website, bringing together information from the candidate bodies, and the matters they will have authority to enforce, into a single "one-stop shop". This would also assist in embedding and enhancing the brand that the SEB will create.

168. This opinion echoes the recommendations on the creation of a SEB set out in the ODLME Strategy for 2021-2022:

"...the SEB will need a unified identity and clear objectives, and to consolidate and project a coherent narrative around labour market enforcement. Clearly it will need a strong, positive name and publicly stated mission. ... the SEB needs the right structural and governance arrangements to support rather than hinder its efforts to communicate with businesses and workers. This includes having control over their

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<sup>218</sup> [Who else can help? - GLAA](#)

communications outlets, enabling agile responses to emerging threats and experimentation with diverse ways of getting messages to target groups.”<sup>219</sup>

169. The ability to ensure ease of access to communications relating to labour market enforcement activity was commented on further in the ODLME’s 2022-23 strategy:

“HMRC NMW and EAS both operate within large government departments with a large reach but undertaking effective communications specific to their areas can be challenging, in part due to limitations imposed by the GOV.UK digital space (Rec 3a 2021/22). As an Arm’s Length Body, GLAA has greater freedom, including its own website. It is good that the GLAA website includes links to EAS and HMRC NMW. Until a SEB becomes operational, could more be done to utilise the GLAA’s own digital platform for combined messaging to workers from all three enforcement bodies.”<sup>220</sup>

170. This supports the view that despite the drive to unify all government material on GOV.UK, access to labour market material can sometimes get lost. This must be avoided if employers and workers are to be able to easily access information on their rights, and on compliance requirements.

## International functions

171. The role of the SEB and how it will function within the international labour market space, considering migration pathways, and labour needs in the UK, must be considered. Of the three bodies the GLAA is primarily the body that developed an international responsibility, necessitated by workers being recruited across the European Union, pre-Brexit, to come to the UK, where such recruiters needed to be licensed by the GLAA. This required the development of collaboration with other European Union nations’ labour inspectorates to confirm the compliance of the recruiter under the prevailing domestic labour laws in the sending country. This has become more complex post-Brexit, where the UK’s Seasonal Workers Scheme Operators have recruited workers from Nepal, Indonesia, Kazakhstan, Uzbekistan, Kyrgyzstan, Tajikistan, and are considering recruitment from further afield.

172. The GLAA pre-Brexit co-led the Europol forced labour operational strand of activity with Dutch colleagues, and completed Memoranda of Understanding with counterparts in Ireland, and more recently Uzbekistan and Kyrgyzstan, to support information exchange to assist compliance checks. Its relationship through Europol further supported such collaboration and exchange. Inevitably this will be a continuing

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<sup>219</sup> [ODLME United Kingdom Labour Market Enforcement Strategy 2021/22](#) (page 38-39)

<sup>220</sup> [ODLME United Kingdom Labour Market Enforcement Strategy 2022/23](#) page 36

role for the SEB in an environment where it may not have historical links with emerging countries of recruitment.

173. The UK has maintained operational links with Europol. If the UK had not left the EU, it is reasonable to assume that the SEB may have been the representative body attending the European Labour Authority (ELA). Issues facing the UK face other EU countries and formal links ought to be created with ELA to enhance cross-border co-operation. Closer cooperation between the UK and the EU, and consequently the SEB and ELA, would align with the recent comments by David Lammy, on being "absolutely committed to a close partnership with our European neighbours."<sup>221</sup>

174. In addition to developing the relationship with ELA, the establishment of a dedicated international unit within the SEB would also hold responsibility for addressing recommendations on labour market and labour exploitation issues proposed by the Council of Europe's GRETA committee, and the Organisation for Security and Cooperation in Europe (OSCE).

175. In relation to ethical recruitment, and fair work, developing good practice, it would create a hub for liaison with the International Labour Organisation's (ILO) Fair Recruitment Initiative<sup>222</sup> and the International Organisation for Migration (IOM) Iris Ethical Recruitment project.<sup>223</sup> It would also support liaison with the IOM on pre-departure awareness for migrating workers, as has occurred in the Central Asian countries, which have become primary recruiting countries for the seasonal worker's scheme.

176. In the UK, the embassies of Romania, Bulgaria, and the Philippines have dedicated labour attaches to assist their citizens with any problems they encounter with their employment in the UK. It is understood that Uzbekistan is also considering the development of this type of role, due to the increasing number of its citizens migrating to the UK as part of the Seasonal Workers Scheme. A report<sup>224</sup> by HEUNI<sup>225</sup> for the Council of Baltic Sea States<sup>226</sup> included recommendations that Countries should establish a network of labour attachés to support migrated workers in the destination country. The Council of Europe's 2022 Recommendation on Forced Labour<sup>227</sup> similarly recommended that approach, but also highlighted the need for the attachés from destination countries in origin countries:

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<sup>221</sup> [It's time to reset Britain's relations with Europe: article by David Lammy - GOV.UK \(www.gov.uk\)](#)

<sup>222</sup> [Ensuring fair recruitment: what the ILO has achieved - InfoStories](#)

<sup>223</sup> [International Organisation for Migration IRIS Ethical Recruitment project](#)

<sup>224</sup> [HEUNI "Guidelines to prevent abusive recruitment, exploitative employment and trafficking of migrant workers in the Baltic Sea region", page 72](#)

<sup>225</sup> [Heuni](#) - The European Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI) is the European regional institute in the United Nations Criminal Justice and Crime Prevention programme network.

<sup>226</sup> Council of Baltic Sea States: [About Us – CBSS](#)

<sup>227</sup> Council of Europe "[Preventing and combating trafficking in human beings for the purpose of labour exploitation - Recommendation CM/Rec\(2022\)21" \(coe.int\)](#). Page 14

“Countries of origin should consider the appointment of labour attachés at embassies in countries of destination, while countries of destination should consider the appointment of labour or migration attachés in countries of origin who can provide information about working in countries of destination prior to migrant workers’ departure.”

177. Such an approach would partially support FLEX’s 2021 recommendation<sup>228</sup> to:

“4. Make new resources available to the GLAA, and future Single Enforcement Body, to conduct overseas licence and compliance inspections.”

178. It must be recognised that the labour inspectors of one country do not have the authority to conduct inspections in another country, in the same way as there are limitations on what the police can do outside the UK. However, labour attachés could enhance liaison and potentially shadow labour inspectorate activity in the country of origin of the workers, supporting joint investigative approaches.<sup>229</sup>

179. The establishment of such labour attachés, though not an initial and immediate priority for a SEB ought to be considered for longer-term development. Such a function would mirror similar approaches created by the development of HMRC’s Fiscal Office network<sup>230</sup> and the NCA’s International Liaison Officer network.<sup>231</sup> It would enhance collaboration in high-risk countries of migration to the UK, preparing workers for work in the UK, working with organisations such as the IOM, and ensuring cross-border collaboration with counterpart organisations to prevent and tackle cross-border labour exploitation. Such an approach would enhance the UK’s international commitments, and support the ILO’s 2014 Recommendation:

“14. International cooperation should be strengthened between and among Members and with relevant international and regional organizations, which should assist each other in achieving the effective and sustained suppression of forced or compulsory labour, including by:

- a) strengthening international cooperation between labour law enforcement institutions in addition to criminal law enforcement.

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<sup>228</sup> FLEX “[ASSESSMENT OF THE RISKS OF HUMAN TRAFFICKING FOR FORCED LABOUR ON THE UK SEASONAL WORKERS PILOT](#)”, page 73

<sup>229</sup> Such activity would normally be defined in bilateral agreements, and follow best practice, as illustrated in the EU’s “[practitioner’s toolkit: drafting, implementing, reviewing and improving bilateral agreements and memoranda of understanding to tackle undeclared work](#)”, developed pre-Brexit with UK involvement.

<sup>230</sup> “His Majesty’s Revenue & Customs (HMRC) is the UK’s tax and customs administration and is responsible for collecting tax revenue on behalf of the UK government, making sure that money is available to fund the UK’s public services. HMRC is also charged with closing the tax gap and reducing tax avoidance and evasion. HMRC’s Fiscal Crime Liaison Officer (FCLO) Network is responsible for facilitating international co-operation with host countries in support of these priorities.” ([Liaison Support Officer to the HMRC Fiscal Crime Liaison Officers, Washington DC - FCO Local Posts \(tal.net\)](#))

<sup>231</sup> “We have a network of International Liaison Officers (ILOs) covering more than 130 countries around the world. Our ILOs work with national authorities in-country to leverage local intelligence and law enforcement assets against shared threats. As well as collaborating with local authorities our ILOs also work closely with representatives from other UK agencies deployed overseas to support wider government objectives, including fostering good governance and enhancing security and stability.” - ([Fugitives and international crime - National Crime Agency](#))

- b) mobilizing resources for national action programmes and international technical cooperation and assistance.
- c) mutual legal assistance.
- d) cooperation to address and prevent the use of forced or compulsory labour by diplomatic personnel; and
- e) mutual technical assistance, including the exchange of information and the sharing of good practice and lessons learned in combating forced or compulsory labour.”<sup>232</sup>

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<sup>232</sup> [ILO R203- Forced Labour \(Supplementary Measures\) Recommendation, 2014 \(No. 203\), in support of the 2014 Protocol to the 1930 Convention on Forced Labour.](#)

# Appendices

## Appendix 1: The Authors

### **The Work Informalisation and Place Research Centre**

The Work, Informalisation and Place Research Centre provides methodologically innovative interdisciplinary studies with a specific focus upon the spatial dimensions of contemporary work and employment in sectors such as hand car washes, nail bars, and small-scale garment manufacturing. Work in these sectors tends towards casualisation and informalisation where workers operate under business models that embed patterns of labour market exploitation. Exploitation includes wage theft, under payment of the national minimum wage through to modern slavery where employer coercion centres on work for favours, labour bondage and tied labour in unsafe workplaces.

### **Externally Recognised Areas of Research Expertise**

The frailties of labour market regulation and permissiveness in the policy tolerance of labour market coercion, exploitation and modern slavery in defined at-risk sectors car washes, nail bars, sub-contract garment manufacturing, food delivery, construction, and care work. Our research has secured funding from the AHRC, BEIS, the Home Office, GLAA and the NCA. Our researchers can create bespoke predictive maps that identify workplace locations in specific sectors that are likely exhibit labour market coercion, exploitation, and the potential for modern slavery. For example, our expertise examined the association between Covid-19 and Informal Workplaces in specific sectors and post code areas (UK RI funded MSPEC project). The centre has a theoretical and applied focus ensuring our research makes a difference in the areas we study. We are currently completing a feasibility study on the potential of a mandatory licensing scheme for the hand car wash sector across the UK.

### **Darryl Dixon**

Darryl worked for the Department for Work and Pensions (DWP), primarily in Counter Fraud divisions, over a period of 19 years, as a frontline investigator, and latterly managing the unit providing advice and guidance to investigators and implementing new enforcement legislation. On leaving DWP he joined the Security Industry Authority (SIA), as Assistant Director of Licensing. He left the SIA in 2005 to join the GLA, where he was responsible for the establishment of the original operational functions, as Director of Operations. Then, as Director of Strategy, he led on the implementation of the 2016 changes as the GLA transformed into the GLAA, with its new remit and powers. Finally, until leaving the organisation in December 2023, as Head of the GLAA SEB programme, he was responsible for preparations for the proposed amalgamation.

Throughout his tenure at the GLAA he led on international liaison and co-led the development of the labour inspectorate/police group at Europol with Dutch colleagues,

to foster cross-border cooperation. This also included the completion of cooperation agreements with the Republic of Ireland's Workplace Commission, the International Labour Organisation (ILO), the International Organisation for Migration (IOM), and with authorities in Kyrgyzstan and Uzbekistan (to support risk reduction in recruitment for the UK's seasonal worker scheme). He was the first chair of the IOM's Global Policy Network's Inspection and Enforcement thematic working group until December 2023. He was a member of the Council of Europe's drafting committee between 2021 and 2022, which produced the new Recommendation on Forced Labour and its associated Memorandum.

He holds a MSc in Security Management from the University of Leicester and was appointed as a Senior Research Fellow at Nottingham Trent University's Business School's Work, Informalisation, and Place Research Centre, from April 2024.

### **Rich Pickford**

Rich is the manager of Nottingham Civic Exchange, the university's Think Tank located in the School of Social Science. The Civic Exchange facilitates the translation and exchange of academic knowledge and expertise for local, regional and national. He facilitates change on a wide variety of topics and issues and undertakes a range of research work.

Throughout his time at NTU Rich has undertaken research and policy engagement related to work and employment. He has studied the concept of good work and led a city-wide engagement project on how a place like Nottingham could become a good work city challenging economic insecurity and tackling poor labour practices. Rich helps lead the Work, Informalisation and Place Research Centre to both understand and develop solutions to informalisation and work. He has helped tackle labour exploitation through a partnership with the National Crime Agency, is exploring the growth of high street nail bars and has also led on work to understand the role of regulation and enforcement to improve the hand car wash sector in the UK working with the Home Office, GLAA and Responsible Car Wash Scheme.

Within the emergency service space, he has worked to map health and wellbeing needs within the fire and rescue community of the UK and supported the Fire Fighters Charity project on pre and post-vention suicide support. Alongside NTU's Vice Chancellor he has undertaken research on higher level skills development and is engaged in debates on good work and the economic future of the region. Through the Covid-19 pandemic he worked alongside the C19 National Foresight Group and is part of the team which leads the new Climate Security National Foresight Group.

Rich also plays a role to enhance university and policy engagement and is a co-chair of the University Policy Engagement Network's Areas of Research Interest Sub-Committee.

## **Professor Ian Clark**

Ian is Professor of Work and Employment at Nottingham Business School and leads the Work, Informalisation and Place Research Centre. Ian's current research focuses on the frailties of labour market enforcement in the UK where he and his colleagues have studied work and employment in several at-risk sectors, such as hand car washes, nail bars, food delivery and garment manufacturing.

Ian's research has secured funding from the Arts and Humanities Research Council, the Economic and Social Research Council, BEIS, The Home Office, the National Crime Agency, the Treasury and the Anglo-German Foundation. His research is published in worlding journals and Ian Edited the journal *Work, Employment and Society*, 2014-2019.

Ian is a member of BUIRA and a Chartered member of the CIPD.

## **Appendix 2: Current bodies in line for inclusion in the SEB**

### **Employment Agency Standards (EAS) Inspectorate.**

EAS was created by the Employment Agencies Act 1973 and is a part of the Department for Business and Trade. This Act introduced the inspection authority of EAS.<sup>233</sup> It operates across England, Wales, and Scotland, but not Northern Ireland where a separate body, the Employment Agency Inspectorate in the Department for the Economy Northern Ireland, fulfils the same role.<sup>234</sup> The role of EAS therefore applies in England, Wales, and Scotland, enforcing the Conduct of Employment Agencies and Employment Businesses Regulations (the “Conduct Regulations”).

EAS’s inspection powers are compared in Appendix 6.

EAS provides guidance on its role in “Employment Agency Standards Inspectorate: A brief guide for agencies.”<sup>235</sup> It has a separate Enforcement policy statement on how it reaches sanction.<sup>236</sup> Details of those subject to its use of prohibition orders are provided on its webpage on Gov.uk.<sup>237</sup>

### **National Minimum Wages team (NMW).**

NMW operates the national minimum wage regulations on behalf of the Department for Business and Trade, which was sub-contracted to HMRC, within which NMW sits.

Guidance on how NMW enforce compliance is on GOV.UK.<sup>238</sup> NMW’s inspection powers are compared in Appendix 6. This sets out when notices of underpayment will be used, and when an offender will be “ named and shamed”.

### **Gangmasters and Labour Abuse Authority**

The GLAA licences labour providers in the agricultural and shellfish sectors throughout the UK.

The GLAA has powers of entry limited to assessment of compliance with licensing standards by licence holders. GLAA inspection powers are compared in Appendix 6.

GLAA undertakes criminal investigations into the actions of unlicensed gangmasters, as well as those who use unlicensed gangmasters.

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<sup>233</sup> [Employment Agencies Act, section 9 Inspection](#)

<sup>234</sup> [Employment Agencies Inspectorate Northern Ireland](#)

<sup>235</sup> [Employment Agency Standards Inspectorate: a brief guide for agencies \(publishing.service.gov.uk\)](#)

<sup>236</sup> [Employment Agency Standards \(EAS\) Inspectorate: enforcement policy statement - GOV.UK \(www.gov.uk\)](#)

<sup>237</sup> [People prohibited from running an employment agency or business - GOV.UK \(www.gov.uk\)](#)

<sup>238</sup> [National Minimum Wage: policy on enforcement, prosecutions and naming employers who break National Minimum Wage law - GOV.UK \(www.gov.uk\)](#)

From 2016 its remit was extended in England and Wales to enable it to investigate any labour market offences up to and including the offence of forced labour. To do so it has police powers from the Police and Criminal Evidence Act 1984. This compliments its existing powers under:

1. Regulation of Investigatory Powers Act 2000
2. Proceeds of Crime Act 2002, and
3. Investigatory Powers Act 2016

The GLAA provides a guide to how it operates its existing powers<sup>239</sup> and publishes its enforcement policy<sup>240</sup> on its independent website.

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<sup>239</sup> GLAA [Code of practice on compliance enforcement and investigations Jan 2019 \(gla.gov.uk\)](#)

<sup>240</sup> GLAA [Enforcement Policy Statement- GLAA](#)

## Appendix 3: The existing enforcement landscape

Enforcement Body	Areas of Enforcement	Geographical Coverage
HM Revenue and Customs (HMRC) (on behalf of the Department for Business Energy and Industrial Strategy (BEIS))	National Minimum and National Living Wages	UK wide
Gangmasters and Labour Abuse Authority (GLAA) (sponsored by the Home Office)	Labour Exploitation and modern slavery related to worker exploitation	England and Wales
	Gangmasters licensing scheme for suppliers of labour in high risk sectors in agriculture and the fresh food supply chain	UK wide
Employment Agency Standards Inspectorate (EAS) (part of BEIS)	Employment agencies and employment businesses	England, Wales and Scotland
Health and Safety Executive (HSE) (sponsored by the Department for Work and Pensions (DWP))	Health and safety at work (higher risk sectors)	England, Wales and Scotland (HSE NI covers Northern Ireland)
Local Authorities	Health and safety at work (lower risk sectors)	UK wide
HM Revenue and Customs Statutory Payments Dispute team (on behalf of DWP)	Statutory payments (including statutory sick pay and maternity pay)	UK wide
Equality and Human Rights Commission (sponsored by GEO)	Discriminatory practices in recruitment and employment	England, Wales and Scotland (Equality Commission NI covers Northern Ireland)

Fig 5. Table from *Good Work Plan: establishing a new Single Enforcement Body for employment rights – consultation (2019)*, page 9)

NB: The table did not include the area of enforcement and geographical coverage for EAS's Northern Ireland counterparts: EAI)<sup>241</sup>

<sup>241</sup> [Employment Agencies Inspectorate Northern Ireland](#)

## Appendix 4: 2021 Proposed remit of the SEB

Area of the law	Currently enforced by
National Minimum Wage (NMW) and National Living Wage (NLW)	HM Revenue and Customs (HMRC)
Domestic regulations relating to employment agencies	Employment Agency Standard Inspectorate (EAS)
Umbrella companies, which employ and handle payment for agency workers but do not currently fall within the remit of the Employment Agency Standards Inspectorate	Not currently enforced but government has committed to legislate to give the state a role
Licenses to supply temporary labour in high risk sectors in agriculture and the fresh food supply chain	Gangmasters and Labour Abuse Authority (GLAA)
Labour exploitation and modern slavery related to worker exploitation	Gangmasters and Labour Abuse Authority (GLAA)
Holiday pay for vulnerable workers	Not currently enforced but government has committed to legislate to give the state a role
Statutory Sick Pay	HMRC currently run a dispute resolution process
Modern slavery statements	A present the only enforcement route is for the Home Secretary to seek an injunction in the High Court.
Unpaid employment tribunal awards	Penalty scheme currently run by BEIS

*Fig 6. Image from Establishing a new single enforcement body for employment rights: Government response, (2021), page 15)*

## Appendix 5: Recommendations from 2023 Reports

### a) University of Nottingham/Independent Anti-Slavery Commissioner

For the SEB to function effectively and succeed in improving labour market enforcement, this study poses a series of considerations for policymakers, practitioners and partners:

- **Adequate funding and resource.** Respondents expressed concern that a SEB could face severe funding limitations within the context of continued austerity and constraints for institutional resourcing. Adequate funding and resource must be provided in tandem with an increase in powers and remit, which are key to meaningful reform of labour market enforcement.
- **A clear remit.** It must be clear what categories and areas of enforcement the SEB covers, and whether this will include the gig and informal economies in addition to the formal economy. The SEB presents an opportunity to address a current lack of clarity across enforcement law and practice and a fragmented labour enforcement system.
- **Modern slavery mandate.** An expanded SEB is expected to enforce Section 54 of the Modern Slavery Act in relation to modern slavery statements, and should hold responsibility for identifying, reporting, and investigating modern slavery. This mandate must be supported with sufficient legislative remit, funding, and capacity.
- **Defined powers.** The SEB needs to have access to wide ranging powers from normative, compliance-led influence through to light and hard enforcement powers, which are currently spread across the existing labour market enforcement bodies. These enforcement powers should be operable and consistent throughout the UK.
- **Guidelines for businesses.** Assisted by clearly defined powers of the SEB, guidelines should be issued to businesses to ensure they understand and can meet expectations on labour market compliance.
- **A strengths-based partnership approach.** The SEB should embody a truly functional partnership between relevant partners (enforcement agencies, civil society, businesses domestically and internationally) whereby contributions are recognised and compensated.
- **Transformative institutional change.** The SEB needs to recruit a more varied body of staff with wider experiences and backgrounds, whilst supporting current staff through training and opportunities for promotion to encourage retention of expertise. This would facilitate the cultural change needed for the establishment of a reformed and revitalised single labour market enforcement body.

*Fig 7. Recommendations from Restating the case for a Single Enforcement Body, University of Nottingham Rights Lab and the Independent Anti-Slavery Commissioner, (January 2023), page 29)*

### b) Resolution Foundation: A five-point plan for labour market enforcement in the 2020s and beyond

1. Introduce a single enforcement body that covers all worker rights unless reserved to another body
2. Build social partnership into labour market enforcement institutions
3. Give designated worker and business bodies the standing to bring a 'super-complaint' to the SEB
4. Get serious about deterring non-compliance by increasing the number of inspectors and scale of penalties

5. Strengthen the employment tribunal system for those cases that require adjudication

(Source: "Enforce for good: Effectively enforcing labour market rights in the 2020s and beyond", Resolution Foundation, (April 2023), Section 6, pages 65-69)

## Appendix 6: Comparison of existing powers of entry

EAS	GLAA	NMW
<p><a href="#">Employment Agencies Act 1973, section 9</a>, as amended by the Immigration Act 2016 and previous Acts</p>	<p><a href="#">Gangmasters (Licensing) Act 2004, section 16</a>, as amended by the Immigration Act 2016</p>	<p><a href="#">National Minimum Wage Act 1998, section 14</a>, as amended by the Immigration Act 2016</p>
<p>Inspection</p> <p><b>F1</b>(A1) This section does not apply to an officer acting for the purposes of this Act in relation to England and Wales if the officer is a labour abuse prevention officer within the meaning of section 114B of the Police and Criminal Evidence Act 1984 (PACE powers for labour abuse prevention officers).]</p> <p>(1) Any officer <b>F2</b> acting for the purposes of this Act] may at all reasonable times on producing, if so required, written evidence of his authority—</p> <p>(a) [enter any relevant business premises<b>F3</b>];</p> <p>(b) inspect those premises and</p> <p>(i) (any records or other documents kept in pursuance of this Act or of any regulations made there under <b>F4</b>;</p> <p>(ii)[any financial records or other financial documents not falling within paragraph <b>F5</b> (i) which he may reasonably require to inspect for the purpose of ascertaining whether the</p>	<p>Powers of officers</p> <p><b>F1</b>(A1) This section does not apply to an enforcement officer who is acting for the purposes of this Act in relation to England and Wales if the officer is a labour abuse prevention officer within the meaning of section 114B of the Police and Criminal Evidence Act 1984 (PACE powers for labour abuse prevention officers).]</p> <p>(1) An enforcement officer or a compliance officer acting for the purposes of this Act shall have power for the performance of his duties—</p> <p>(a) to require the production by a relevant person of any records required to be kept by virtue of this Act, to inspect and examine those records, to remove those records from the premises where they are kept and to copy any material part of them,</p> <p>(b) to require a relevant person to furnish to him (either alone or in the presence of any other person, as the officer thinks fit) an explanation of any such records,</p> <p>(c) to require a relevant person to furnish to him (either alone or in the presence of</p>	<p>Powers of Officers</p> <p><b>F1</b>(A1) This section does not apply to an officer acting for the purposes of this Act in relation to England and Wales if the officer is a labour abuse prevention officer within the meaning of section 114B of the Police and Criminal Evidence Act 1984 (PACE powers for labour abuse prevention officers).]</p> <p>(1) An officer acting for the purposes of this Act shall have power for the performance of his duties—</p> <p>(a) to require the production by a relevant person of any records required to be kept and preserved in accordance with regulations under section 9 above and to inspect and examine those records and to copy <b>F2</b>... them;</p> <p>(b) to require a relevant person to furnish to him (either alone or in the presence of any other person, as the officer thinks fit) an explanation of any such records;</p> <p>(c) to require a relevant person to furnish to him (either alone or in the presence of</p>

EAS	GLAA	NMW
<p>provisions of this Act and of any regulations made thereunder are being complied with or of enabling the Secretary of State to exercise his functions under this Act;]and</p> <p>(c) subject to subsection (2) of this section, require any person on those premises to furnish him with such information as he may reasonably require for the purpose of ascertaining whether the provisions of this Act and of any regulations made thereunder are being complied with or of enabling the [F6Secretary of State] to exercise [F6their] functions under this Act[F7; F8...</p> <p>(d) [F8]. . . . .</p> <p>..</p> <p>[(1A) F9 If an officer seeks to inspect or acquire, in accordance with subsection (1)(b) or (c), a record or other document or information which is not kept at the premises being inspected, [F10 the officer may by notice in writing require the person carrying on the employment agency or employment business to furnish him with the record or other document or information at such time and place as he may specify.]</p>	<p>any other person, as the officer thinks fit) any additional information known to the relevant person which might reasonably be needed in order to establish whether</p> <p>(i) any provision of this Act, or</p> <p>(ii) any condition of any licence granted under it, is being complied with,</p> <p>(d) at all reasonable times to enter any relevant premises in order to exercise any power conferred on the officer by virtue of paragraphs (a) to (c).</p> <p>(2)The powers conferred by subsection (1) include power, on reasonable written notice, to require a relevant person—</p> <p>(a) to produce any such records as are mentioned in paragraph (a) of that subsection to an officer at such time and place as may be specified in the notice, or</p> <p>(b) to attend before an officer at such time and place as may be specified in the notice to furnish any such explanation or additional information as is mentioned in paragraph (b) or (c) of that subsection.</p> <p>(3)The power conferred by subsection (1)(a) includes, in relation to records which are kept by means of a computer, power to require the</p>	<p>any other person, as the officer thinks fit) any additional information known to the relevant person which might reasonably be needed in order to establish whether this Act, or any enforcement notice under section 19 below, is being or has been complied with;</p> <p>a. (d) at all reasonable times to enter any relevant premises in order to exercise any power conferred on the officer by paragraphs (a) to (c) above.</p> <p>(2) No person shall be required under paragraph (b) or (c) of subsection (1) above to answer any question or furnish any information which might incriminate the person or, if [F3married or a civil partner, the person's spouse or civil partner] .</p> <p>(3)The powers conferred by subsection (1) above include power, on reasonable written notice, to require a relevant person—</p> <p>(a) to produce any such records as are mentioned in paragraph (a) of that subsection to an officer at such time and place as may be specified in the notice; or</p> <p>(b) to attend before an officer at such time and place as may be specified in the notice to furnish any such explanation or</p>

EAS	GLAA	NMW
<p>[F11(1AA) Where a person carrying on an employment agency or employment business fails to comply with subsection (1A) in relation to any record or other document or information and the officer has reasonable cause to believe that the record or other document or information is kept by—</p> <p>(a) a person concerned with the carrying on of the employment agency or employment business, or</p> <p>(b) a person formerly so concerned,</p> <p>the officer may by notice in writing require that person to furnish him with the record or other document or information at such time and place as he may specify.</p> <p>(1AB) Where a person carrying on an employment agency or employment business fails to comply with subsection (1A) in relation to any financial record or other financial document which is kept by a bank, the officer may by notice in writing require the bank to furnish the record or other document to him at such time and place as he may specify.</p> <p>(1AC) In subsection (1AB), “ bank ” means a person who has permission under</p>	<p>records to be produced in a form in which they are legible and can be taken away.</p> <p>(4) A person authorised by virtue of subsection (1)(a) to inspect any records is entitled to have access to, and to check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records in question.</p> <p>(5) In this section “relevant person” means any person whom an officer acting for the purposes of this Act has reasonable cause to believe to be—</p> <p>(a) a person acting as a gangmaster,</p> <p>(b) a person supplied with workers or services by a person acting as a gangmaster,</p> <p>a. (c) any employee or agent of a person falling within paragraph (a) or (b).</p> <p>(6) In this section and section 17—“relevant premises” means any premises which an officer acting for the purposes of this Act has reasonable cause to believe to be—</p> <p>(a) premises at which a person mentioned in subsection (5)(a) or (b) carries on business, and</p>	<p>additional information as is mentioned in paragraph (b) or (c) of that subsection.</p> <p>[F4(3A) The power of an officer to copy records under subsection (1)(a) includes a power to remove such records from the place where they are produced to him in order to copy them; but such records must be returned as soon as reasonably practicable to the relevant person by whom they are produced.]</p> <p>(4) In this section “relevant person” means any person whom an officer acting for the purposes of this Act has reasonable cause to believe to be—</p> <p>(a) the employer of a worker;</p> <p>(b) a person who for the purposes of section 34 below is the agent or the principal;</p> <p>(c) a person who supplies work to an individual who qualifies for the national minimum wage;</p> <p>(d) a worker, servant or agent of a person falling within paragraph (a), (b) or (c) above; or</p> <p>(e) a person who qualifies for the national minimum wage.</p> <p>(5) In this section “relevant premises” means any premises which an officer acting for the</p>

EAS	GLAA	NMW
<p>[F12Part 4A] of the Financial Services and Markets Act 2000 to accept deposits. ]</p> <p>[F13(1AD) An officer may take copies of any record or other document inspected by or furnished to him under this section.</p> <p>(1AE) An officer may, for the purposes of subsection (1AD), remove a record or other document from the premises where it is inspected by or furnished to him; but he must return it as soon as reasonably practicable.]</p> <p>(1B) In subsection (1) “relevant business premises” means premises—</p> <ul style="list-style-type: none"> <li>(a) which are used, have been used or are to be used for or in connection with the carrying on of an employment agency or employment business,</li> <li>b. (b) which the officer has reasonable cause to believe are used or have been used for or in connection with the carrying on of an employment agency or employment business, or</li> <li>(c) which the officer has reasonable cause to believe are used for the carrying on of a business by a person who also carries on or has carried on an employment agency or employment</li> </ul>	<p>(b) premises which such a person uses in connection with his business, “premises” includes any place and, in particular, includes—</p> <ul style="list-style-type: none"> <li>(a) any vehicle, vessel, aircraft or hovercraft, and</li> <li>(b) any tent or movable structure.</li> </ul> <p>[The offence of obstructing an officer is set out in <a href="#">section 18</a>]</p>	<p>purposes of this Act has reasonable cause to believe to be—</p> <ul style="list-style-type: none"> <li>(a) premises at which an employer carries on business;</li> <li>(b) premises which an employer uses in connection with his business (including any place used, in connection with that business, for giving out work to home workers, within the meaning of section 35 below); or</li> <li>(c) premises of a person who for the purposes of section 34 below is the agent or the principal.</li> </ul> <p>[The offence of obstructing an officer is set out in <a href="#">section 31</a>]</p>

EAS	GLAA	NMW
<p>business, if the officer also has reasonable cause to believe that records or other documents which relate to the employment agency or employment business are kept there.</p> <p>(1C) For the purposes of [F14this section]—  (a) “document” includes information recorded in any form, and  (b) information is kept at premises if it is accessible from them.]</p> <p>(2) [F15 Nothing in this section shall require a person to produce, provide access to or make arrangements for the production of anything which he could not be compelled to produce in civil proceedings before the High Court or (in Scotland) the Court of Session.</p> <p>(2A) Subject to subsection (2B), a statement made by a person in compliance with a requirement under this section may be used in evidence against him in criminal proceedings.</p> <p>(2B) Except in proceedings for an offence under section 5 of the M1 Perjury Act 1911 (false statements made otherwise than on oath), no evidence relating to the statement may be adduced, and no question relating</p>		

EAS	GLAA	NMW
<p>to it may be asked, by or on behalf of the prosecution unless—</p> <p>(a) evidence relating to it is adduced, or</p> <p>(b) a question relating to it is asked, by or on behalf of the person who made the statement.]</p> <p>(3) Any person who obstructs an officer in the exercise of his powers under [F16subsection (1)(a) or (b), (1AD) or (1AE)] shall be guilty of an offence and liable on summary conviction to a fine not exceeding [F17level 3 on the standard scale]and any person who, without reasonable excuse, fails to comply with a requirement under[F18subsection (1)(c), (1A), (1AA) or (1AB)] shall be guilty of an offence and liable on summary conviction to a fine not exceeding [F17level 3 on the standard scale].</p> <p>(4) (a)[F19No information to which this subsection applies shall be disclosed except—]</p> <p>(i) with the consent of the person by whom the information was furnished or, where the information was furnished on behalf of another person, with the consent of that other person or with the consent of the person carrying on or proposing to carry on the employment agency or employment business concerned; or</p>		

EAS	GLAA	NMW
<p>[F20 removed previous (ii) and (iii)</p> <p>(ii) [(F21)to the Secretary of State, or an officer [F22acting for the purposes of this Act,] for the purposes of the exercise of their respective functions under this Act; or</p> <p>(iii) [F23 by the Secretary of State, or an officer [F24acting for the purposes of this Act,] to the person carrying on or proposing to carry on the employment agency or employment business concerned, to any person in his employment or, in the case of information relating to a person availing himself of the services of such an agency or business, to that person; or]</p> <p>(iv) [F21] with a view to the institution of, or otherwise for the purposes of, any criminal proceedings pursuant to or arising out of this Act or for the purposes of any [F25proceedings under section 3A, 3C or 3D of this Act]. [F26 or</p> <p>(v) to an officer acting for the purposes of the National Minimum Wage Act 1998 for any purpose relating to that Act][F27; or</p> <p>(vi) F28. .... .]</p> <p>(vii) [F29 to an officer acting by virtue of section 26 of the Immigration Act 2016</p>		

EAS	GLAA	NMW
<p>(investigative functions in connection with labour market enforcement undertakings and orders); or</p> <p>(viii) to an officer acting for the purposes of Part 2 of the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981 for any purpose relating to that Part; or</p> <p>(ix) to the Pensions Regulator for the purposes of the exercise of any function of the Regulator; or</p> <p>(x) to the Care Quality Commission for the purposes of the exercise of any function of the Commission.]</p> <p>(b)Any person who contravenes paragraph (a) of this subsection shall be guilty of an offence and liable on summary conviction to a fine not exceeding [F17]level 5 on the standard scale].</p> <p>(5) [F30Subsection (4) applies to—</p> <p>(a) information obtained in the course of exercising the powers conferred by this section,</p> <p>(b) information obtained pursuant to section 15(5A) of the National Minimum Wage Act 1998, and</p>		

EAS	GLAA	NMW
(c) information obtained in the course of exercising powers by virtue of section 26(1) of the Immigration Act 2016 (investigative functions in connection with labour market enforcement undertakings and orders).]		

*Fig 8. Comparison of existing powers of entry*

## Appendix 7: Comparison of UK Modern Slavery legislation

Modern Slavery Act 2015 (England and Wales)	Human Trafficking and Exploitation (Scotland) Act 2015	Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015
<p>3. Meaning of exploitation</p> <p>(1) For the purposes of section 2 a person is exploited only if one or more of the following subsections apply in relation to the person.</p> <p style="padding-left: 40px;">Slavery, servitude and forced or compulsory labour</p> <p>(2) The person is the victim of behaviour—</p> <p style="padding-left: 40px;">(a) which involves the commission of an offence under section 1, or</p> <p style="padding-left: 40px;">(b) which would involve the commission of an offence under that section if it took place in England and Wales.</p>	<p>3. Exploitation for purposes of offence of human trafficking</p> <p>(1) For the purposes of section 1, a person is exploited only if one or more of the following subsections apply in relation to that person. Slavery, servitude and forced or compulsory labour</p> <p style="padding-left: 40px;">a) (2) The person is the victim of conduct which—</p> <p style="padding-left: 80px;">involves the commission of an offence under section 4, or</p> <p style="padding-left: 40px;">b) would constitute such an offence were it done in Scotland.</p>	<p>Meaning of exploitation for purposes of section 2</p> <p><b>3—</b></p> <p>(1) For the purposes of section 2, a person is exploited only if one or more of the following subsections apply in relation to the person.</p> <p>(2) Slavery, servitude and forced or compulsory labour</p> <p style="padding-left: 40px;">The person is the victim of behaviour—</p> <p style="padding-left: 80px;">a) which involves the commission of an offence under section 1, or</p> <p style="padding-left: 80px;">b) which would involve the commission of an offence under that section if it took place in Northern Ireland.</p>
<p>4. Committing offence with intent to commit offence under section 2</p> <p>A person commits an offence under this section if the person commits any offence with the intention of committing an offence under section 2 (including an offence committed by aiding, abetting, counselling or procuring an offence under that section).</p>	<p>5. General aggravation of offence</p> <p>(1) This subsection applies where it is—</p> <p style="padding-left: 40px;">(a) libelled in an indictment or specified in a complaint that an offence is aggravated by a connection with human trafficking activity, and</p> <p style="padding-left: 40px;">(b) proved that the offence is so aggravated.</p> <p>(2) An offence is aggravated by a connection with human trafficking activity if the offender is motivated (wholly or partly) by the objective of committing or conspiring to commit the offence of human trafficking.</p> <p>(3) It is immaterial whether or not in committing an offence the offender in fact enables the offender or</p>	<p>Committing offence with intent to commit offence under section 1 or 2</p> <p><b>4—</b></p> <p>(1) A person commits an offence under this section if the person commits any offence with the intention of committing an offence under section 1 or 2 (including an offence committed by aiding, abetting, counselling or procuring an offence under that section).</p> <p>(2) A person guilty of an offence under this section is (unless subsection (3) applies) liable—</p>

Modern Slavery Act 2015 (England and Wales)	Human Trafficking and Exploitation (Scotland) Act 2015	Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015
	<p>another person to commit the offence of human trafficking.</p> <p>(4) Evidence from a single source is sufficient to prove that an offence is aggravated by a connection with human trafficking activity.</p> <p>(5) Where subsection (1) applies, the court must—</p> <ul style="list-style-type: none"> <li>(a) state on conviction that the offence is aggravated by a connection with human trafficking activity,</li> <li>(b) record the conviction in a way that shows that the offence is so aggravated,</li> <li>(c) take the aggravation into account in determining the appropriate sentence, and</li> <li>(d) state— <ul style="list-style-type: none"> <li>(i) where the sentence in respect of the offence is different from that which the court would have imposed if the offence were not so aggravated, the extent of and the reasons for that difference, or</li> <li>(ii) otherwise, the reasons for there being no such difference.</li> </ul> </li> </ul>	<p>(a) on conviction on indictment, to imprisonment for a term not exceeding 10 years;</p> <p>(b) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both.</p> <p>1. (3) Where the offence under this section is committed by kidnapping or false imprisonment, a person guilty of that offence is liable, on conviction on indictment, to imprisonment for life.</p>
Slavery and Trafficking Prevention Orders (sections 14-22)	Slavery and Trafficking Prevention Orders (sections 16-25)	Schedule 3 slavery and trafficking prevention orders (and also schedule 2 slavery and trafficking reparation orders)
Slavery and Trafficking Risk Orders (sections 23-29)	Slavery and Trafficking Risk Orders (sections 26-31)	

Fig 9. Comparison of UK Modern Slavery legislation

## Appendix 8: Current sanctions table

Sanction	EAS	GLAA	NMW
Additional licence conditions (civil)			
Licence refusal (civil)			
Licence revocation (civil)			
Advisory warning (civil)		informal advisory warning	
Warning as enforcement outcome	not referenced in enforcement policy	informal advisory warning	not referenced in enforcement policy
LMEU (civil sanction alternative to prosecution)	E&W, Scotland only	E&W, Scotland only	
LMEO (civil sanction alternative to prosecution)	E&W, Scotland only	E&W, Scotland only	
Combined LMEU		E&W only	
Combined LMEO		E&W only	
Prohibition	E&W, Scotland only		
Notice of underpayment (civil)			
Naming and Shaming (civil)			
Underpayment penalty (civil)			
Prosecution	E&W, Scotland only	UK for Gangmaster offences, E&W for Modern Slavery offences only	
STPO		E&W only	
STRO		E&W only	

Fig 10. Sanctions available to current bodies

## **Appendix 9: Full list of Recommendations**

### ***Regulation and Enforcement***

The new Single Enforcement Body (SEB) must move away from a light-touch regulatory model that has dominated the UK since 2005. To support this a review of the Regulators and Growth Duty Codes regulation must be undertaken to ensure it does not prevent a strong enforcement response determined by the SEB, enabling appropriate and proportionate protection of worker rights as a priority over better regulation. (Key Recommendation 1 and paras 28-37)

### ***Constituent bodies***

A comprehensive remit for the SEB must be UK wide, manage the protection of migrant workers under any immigration scheme, and therefore incorporate EAI NI and the SWS Compliance team. (Key Recommendation 2 and paras 8-9, 59-66, and 89)

### ***Licensing***

Proposals to extend licensing in any industry sector must ensure they understand, and will apply, to all of the employment models operating in a sector otherwise regulation will be partial. (Key Recommendation 3 and paras 38-54)

### ***Powers of Entry***

A general power of entry must be introduced that enables a SEB inspector to enter any premises and examine a business's operations covering all the functions of the candidate bodies. (Key Recommendation 4 and paras 55-58)

Enabling the SEB to investigate a wider set of offences linked to the labour market (see “use of new sanctions and powers” below) would consequently enable a future SEB to use its PACE powers (in England and Wales) to investigate the allegations in cases where evidence did not suggest forced labour was occurring. If the SEB’s authority to operate within the devolved administrations, was implemented (see below), it could take this approach throughout the UK (para 127)

### ***Alignment of powers and sanctions throughout the UK***

The SEB must be empowered to utilise all existing powers in all UK jurisdictions and coastal areas (Key Recommendation 5 and paras 67-97). This would:

- Authorise the SEB to investigate forced labour offences that exist in Northern Ireland and Scotland anti-trafficking legislation, in line with the continuation of that responsibility in England and Wales (as currently exercised by the GLAA)
- Include the authority to investigate maritime-related labour abuses in coastal waters, and offshore facilities
- As part of the alignment of powers relating to forced labour, align the SEB’s ability to utilise, and apply for the equivalent Slavery and Trafficking Prevention and Risk Orders in the Northern Ireland and Scotland Acts

- As all three candidate bodies can use the Labour Market Enforcement Undertakings and Orders (LMEU/Os) sanctions regime, but to different degrees in the different parts of the UK, align their use. In doing so enable the SEB to be able to operate combined LMEU/Os, where appropriate, to cover non-compliances of all three bodies where identified (currently only the GLAA can do so and only in England and Wales)

### ***Use of new sanctions and offences***

Consideration must be given to activating the sanctions that are already available in the Regulatory Enforcement and Sanctions Act 2008. (Key Recommendation 6 and para 98-102)

A comprehensive enforcement policy setting out how, and in what circumstances, different types of sanction at its disposal, individually, or in combination, will be used must be produced. Open and transparent guidance on the use of all sanctions can act as a deterrent and avoid unnecessary challenges to sanction decisions that may be applied. (Key recommendation 6 [explanatory text] and paras 97 and 102)

A fines regime to reinforce the Transparency in Supply Chains (TISC) requirements to enhance due diligence reporting and activity by business, must be reintroduced from the previous consultation, using the Employment Bill as the legislative vehicle to do so (para 103-104).

Consideration must be given to empowering the SEB to be able to investigate job frauds under Fraud Act powers, or create a standalone offence, such as an Aggravated Labour Offence. Other labour market offences must also be brought within its remit (Key recommendation 7 and para 106-127)

The SEB must be supported by Government Legal Services when applying for STROs to reduce its reliance on commercial legal practices when applying for such orders. (para 84)

The SEB must be authorised to retain any income from fine or enforcement costs recovery, to be utilised in frontline enforcement costs (para 105)

### ***Access to remedy- compensation***

A compensation scheme framework must be introduced to provide a consistent method of calculating appropriate compensation where it cannot be secured from the offenders. The scheme must apply to victims to whom reparation is appropriate but whose circumstances may not have led to a prosecution of the offender, for any reason, for modern slavery offences. (Key recommendation 8 and paras 133-141)

### ***Employment status***

A review of the determination of employment status and use of the term “worker”, to prevent avoidance of enforcement controls must be undertaken (undertaken (para 142)

### ***Status of the body and related organisational issues***

An Executive Agency should therefore be considered as the preferred operational model. (Key Recommendation 9 and paras 144-149)

The Governance structure of the SEB must include Trades Unions representation (Key Recommendation 10 and paras 150-151)

The combination of bodies amalgamated into the SEB, and their current reporting lines, as well as relationship to labour market policy, suggests that the SEB should report to the Department of Business and Trade. However, given the powers it will inherit, and authority to investigate forced labour offences, we consider the Home Office should sit on its Board. Dependant on the alignment of powers we propose above that may need to also include representatives from the devolved administrations. (paras 153-155)

The SEB must develop a training package applicable to all existing staff, and for new recruits, ensuring a thorough, tested, understanding of the legislation it will enforce is understood and operated (Key Recommendation 11 and paras 161-163).

In preparation for the creation of the SEB the potential of developing a “shadow organisation” to consider and identify “Day 1 quick wins” including the following must be considered:

- What synergies exist between EAS and the GLAA compliance function for potential amalgamation
- Establishing a specialised unit for the use of criminal investigation powers (e.g. PACE in England and Wales), which might have the responsibility for serious NMW criminal investigation also.
- Pooling of all information held within one intelligence database for more effective strategic trend analysis, and informing case management decisions, as well as information exchange with other enforcement bodies
- A central sanctions unit for the determination and processing of any sanction below referral to prosecution authorities
- Exploring whether opportunities exist for other operational administrative functions – licensing, control of underpayments, chasing payment of Employment Tribunal awards, potentially TISC fines could be managed together
- An education, promotional awareness campaigns, and prevention unit

(para 157)

The SEB must have the correct tools at its disposal including IT infrastructure, and an independent website. Providing clear access to information is recognised as a benefit the GLAA currently can exercise. It will be crucial to the SEB’s establishment, and support for business and workers, for this to continue. (see paras 164-170)

The SEB must work towards streamlining operational reporting and oversight, including whether the ODLME role must cease (Key Recommendation 13 and para152)

### ***International Liaison***

The SEB must operate an international function for this purpose, responsible for liaison with those authorities, and other bodies such as the European Labour Authority, IOM, ILO, and countries of recruitment to the UK, and consider the implementation of labour attaches mirroring similar approaches by HMRC and NCA, also meeting Council of Europe recommendations. (Key Recommendation 14 and paras 171-179)

### ***Resources***

In creating the SEB, the assessment of its inspection resources must be fully funded, including recovery and retention of enforcement costs, <sup>242</sup> (Key Recommendation 15 and paras 158-160)

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<sup>242</sup> [ILO calls for strengthening labour inspection worldwide](#) - the ILO benchmark ratio is one inspector per 10000 workers

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August 2024

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