



**Consultation Response:
Tackling Exploitation in the
Labour Market
(a Home Office/ BIS consultation)**

December 2015

About NISMP

The Northern Ireland Strategic Migration Partnership is a cross-party partnership working across the spheres of government and between the public, private and third sectors to ensure that Northern Ireland effectively welcomes, supports and integrates new migrants in a way which contributes to future economic growth and vibrant, cohesive communities. The Partnership provides a regional advisory function which enables our partners and stakeholders to cultivate an appropriate Northern Ireland migration policy structure and works to ensure that Northern Ireland's needs and concerns in respect of immigration are recognised within the parameters of related UK wide policy.

This response has been approved by representatives on the Partnership. However this does not necessarily reflect the views of Partner Organisations, some of whom have not been canvassed.

Response to Consultation

The case for more effective enforcement

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

Yes X

We believe that more needs to be done to tackle all types of labour market exploitation, whether organised, direct and intentional or whether it is indirect, resulting for example, from a lack of clear accountability in a complex supply chain.

We believe, however, that the absence of a focus on victim support presents a significant gap in the proposals outlined in the consultation putting them at variance with the Modern Slavery Act and the parallel Northern Ireland Human Trafficking and Exploitation Act, where effective victim support is a central part of the overall strategy to eradicate forced labour and human trafficking. In these Acts, protection for victims is recognised as essential to encouraging victims to provide enforcement agencies with necessary intelligence. The GLA plays a key role in the implementation of the Modern Slavery Act and will equally be a key player in the delivery of these current proposals to tackle exploitation in the labour market. Likewise, the remit of the Anti-Slavery Commissioner will include looking at the role of the new Director of Labour Market Enforcement where it relates to slavery. It is therefore important that the attitude to victims is clear and consistent in all enforcement activity undertaken in the area of labour market exploitation. We are concerned that the proposal to criminalise potential victims of labour market exploitation through the proposed introduction of an illegal working offence (as outlined in the current Immigration Bill), will undermine efforts to strengthen enforcement, including in the area of modern slavery, by discouraging victims to come forward.

A new Director of Labour Market Enforcement and more flexible enforcement

2. Do you agree with the following statement?

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

Not sure X

We believe that the current decentralised approach to employment regulation weakens the overall impact of employment legislation and that the creation of a post of Director for Labour Market Enforcement therefore has the potential to tackle worker exploitation.

However, we believe there is a contradiction between the role of the Director in tackling exploitation in the labour market, and the role of the same Director to tackle illegal working as outlined in Part 1 of the Immigration Bill. We don't believe that the same Director can effectively meet the demands of each of these roles. If the goal is to indeed tackle exploitation, exploited workers must be recognised as victims as indeed is the case in the Modern Slavery Act and in the parallel Northern Ireland Human Trafficking and Exploitation Act. If, however, the goal is to tackle illegal working then under the current proposals there is a danger that workers will be classed as offenders alongside their exploitative employers.

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

By creating the position of the Director in the Immigration Bill, there is a risk that the exploitation of indigenous workers will be overlooked and that enforcement activity will only target employers who employ migrant workers. We believe therefore, that for the Director role to be effective in tackling the exploitation of all vulnerable workers, the relevant legislation should be developed separately from the Immigration Bill.

The structures proposed within this consultation have clear overlaps with those in place to address modern slavery. As part of this, the Anti-Slavery Commissioner will consider the performance of the Director where his/her work relates to modern slavery. It is important therefore that there is a convergence of priorities and approaches of each agency within these structures. A priority of the Commissioner is to “see an increase in the numbers of victims of modern slavery that are identified and referred for appropriate support”¹. We believe therefore that a focus on victim support should be included in the remit for the Director of Labour Market Enforcement.

A focus on victim support will also support the Director in “encourag[ing] and enabl[ing] people to report infringements and exploitation”. Without this as a priority there is a danger that the role will be closely associated with enforcement of the new offence of illegal working as proposed in the Immigration Bill which will not only discourage victims

¹www.gov.uk/government/uploads/system/uploads/attachment_data/file/468729/IASC_StrategicPlan_2015.pdf

from coming forward with evidence of exploitation but will also strengthen the control that employers have over these employees, thus making them more difficult to identify and prosecute.

New offence of aggravated labour law breach

- 4. Do you agree that a new offence of aggravated labour law breach is needed to tackle the exploitation of workers?**
- 5. Which of the options described would be effective in tackling labour market exploitation?**
- 6. What are the benefits of creating an offence involving intention to deprive a worker of their rights?**
- 7. What are the benefits of creating an offence involving motivation to exploit a worker or exploiting a worker in connection with such an offence?**
- 8. What are the benefits of creating a new type of improvement notice to tackle exploitation of workers?**

We have no comments to make under this section.

Information sharing

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

Yes X

In our 2013 report into the effectiveness of enforcement mechanisms in Northern Ireland², we sought the views of enforcement agencies and support organisations in relation to the enforcement of employment rights for migrant workers. We found that although migrant workers are made more vulnerable to exploitation because of language barriers, unfamiliar working practices and, in many cases, debts incurred as a result of relocation, it was the fragmented approach to enforcing employment rights, the demand for a cheaper and ever more flexible workforce in certain sectors and the difficulties in pursuing legal redress which were helping ensure that exploitation could be a profitable and low-risk strategy for unscrupulous employers and unlicensed gangmasters. Our principal recommendation in this report was for the creation of a Northern Ireland Employment Rights Authority which would allow for more coordinated working and intelligence sharing between agencies.

²

www.migrationni.org/DataEditorUploads/Employment%20rights%20of%20migrant%20workers%20FINAL%20DRAFT%20NOV13.pdf

Reforming the GLA

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

Yes, expand the role of the Authority X

The GLA has proven to be very effective in the sectors in which they operate. In our report into the effectiveness of enforcement mechanisms in Northern Ireland³, it was noted that complaints in the agricultural and food processing businesses had fallen since its establishment. It was further noted that there was anecdotal evidence to suggest that as a result of the effectiveness of the GLA, some exploitative employers were moving into sectors which were less well regulated. This suggests that in order to stamp out exploitative practices across the board, there should be similar approaches adopted with regard to labour market enforcement.

The objectives and remit of the new Authority

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

Yes X

Yes, we agree that the new Authority should have a focus on worker exploitation. This is, however a much broader remit than the one currently held and consequently the new Authority will need to be appropriately resourced in each of the regions.

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

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

14. What other tasks might the new Authority perform?

We have no comments to make in relation to these questions.

³ ibid

Powers of the New Authority

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

Not sure X

We welcome the focus on labour market breaches and offences that would fall under the remit of the new Director. However clarification regarding the oversight arrangements for the exercise of these powers would need to be agreed before these powers could be extended to Northern Ireland. These should be informed by similar principles as those which underpin the oversight arrangements for the operation of the NCA in Northern Ireland.

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

Not sure X

The GLA has proven to be very effective in the sectors in which they currently operate. This suggests that expansion of powers across all sectors of the labour market would be an effective and tried and tested approach to stamping out exploitative practices across the board. However, if the Authority is to be granted expanded powers as proposed below then clarity around oversight within Northern Ireland would need to be negotiated as per our answer in Q15 above.

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

Yes

No

If No, which ones should not be designated?

The ability to enter and search premises with a warrant authorised by a Justice of the Peace (under section 8 of the Police and Criminal Evidence Act (PACE))

The power to enter premises to execute an arrest warrant or for the purpose of arresting someone for an indictable offence (under section 17 PACE)

The power to search premises controlled by person under arrest (under section 18 PACE)

The powers to search a person at time of arrest and, when a person is arrested for an indictable offence, to search premises in which person was immediately prior to arrest (section 32 PACE)

The power to use reasonable force in exercise of PACE powers, (section 117 PACE)

The ability to seize evidence and then sift through it under section 50 of the Criminal Justice and Police Act.

Please give your reasons.....

See answer to Q18 below

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

With the understanding that oversight will be agreed with the NI Policing Board, if GLA officers are to be provided with investigative powers as suggested in Q17, then we believe that the power to seize and retain anything for which a search has been authorised should be included (i.e. the full powers of entry, search and seizure as laid out in section 8 of PACE); also the power to enter premises for the purposes of ‘saving life or limb or preventing serious damage to property’ (PACE Section 17(1)(e))

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

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

21. Which organisations should this new power apply to?

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

We have no comments to make in relation to these questions.

Licensing

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

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

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

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

We have no comments to make under this section.

Governance and oversight of the new Authority

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

We have no comments to make under this section.