

Dear Tackling Exploitation Team,

The British Hospitality Association represents the hotel, restaurant and catering industry. Our members operate some 40,000 establishments and employ over 500,000 people. We were pleased to have the opportunity to meet officials from both BIS and the Home Office on 20 October to discuss the proposals. At that meeting, we expressed concern about the very short consultation period originally envisaged and are pleased that these concerns have been recognised in the longer consultation period subsequently agreed.

At the meeting on 20 October, it was clear that the measures proposed in the consultation had not been fully thought through and that, given existing powers, for example, on enforcement of the National Minimum Wage, the impact of the measures might be limited in its effect. We deal now with the specific consultation questions:

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

We do not believe there is a serious problem of labour market exploitation in the United Kingdom which the series of proposed measures are intended to address. However, we would never rule out additional measures to deal with problems as they arise. We would also support the case for greater data sharing between enforcement bodies. In particular, we have pointed out to the Low Pay Commission that HM Revenue and Customs' traditional approach to taxpayer confidentiality, while welcomed in relation to taxpaying, is overused in relation to its role in enforcing the National Minimum Wage. This point is picked up under question 9, below.

Question 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 labour exploitation."

The statement makes the assumption that labour exploitation is not being tackled effectively now. There is always scope for improvement and we would therefore suggest that the statement should be about making enforcement more effective.

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

The notion of an official having a public, policy setting role while answering to two Secretaries of State will need careful consideration.

Question 4: Do you agree that a new offence of aggravated labour law breach is needed to tackle exploitation of workers? And

Question 5: Which of the options described [in paragraphs 94 to 96] would be most effective in tackling labour market exploitation?

As we indicated at the meeting on 20 October and after further consideration, we do not think it right to introduce a criminal offence based on "a non-exhaustive list of indicative types of behaviour to provide greater flexibility." Criminal offences should be tightly specified. An exhaustive list would be more certain, but a better approach would be a system of

improvement notices. These work well in areas such as food safety (Food Safety Act 1990, s. 10, applicable in Great Britain), but with a safety net with businesses able to appeal against the order to the local magistrates court (Sheriff Court in Scotland).

Question 6: What are the benefits of creating an offence involving motivation to deprive a worker of their rights? And

Question 7: What are the benefits of creating an offence involving motivation to exploit a worker or exploiting a worker in connection with such an offence?

As we understand the consultation, the proposal is to have a 'double offence' where an existing offence has been committed under state-enforced employment law, such as (as quoted) s.31(1) of the National Minimum Wage Act, based on refusal or wilful neglect to comply with the Act, and to 'double up' with motivation. Arguably, every case under s.31(1) will imply motivation anyway. This implies that every case under s.31(1) will give rise to a further penalty under the proposals. If this is the intention, it might have been simpler to increase the maximum penalties under the relevant existing legislation.

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

As indicated above, we favour this approach. It allows a degree of flexibility to enforcers, but, as noted, is subject to judicial review. Added to this, there would be a need to ensure appropriate training of enforcers to be able to differentiate between exploitative and non-exploitative behaviour by employers.

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

As indicated in our response to question 1 (above), we would support this proposal, though we are not sure about extending the powers to non-official bodies, such as charities.

Question 10: Do you agree with the proposal to expand the role of the [Gangmasters Licensing] Authority or should we retain the current model?

The proposal is in effect the creation of a Labour Inspectorate and the consultation fails to indicate whether businesses can expect inspections on the same basis of regularity as, say, food businesses such as restaurants and shops receive under food safety legislation, or whether the intention is purely to deal with serious exploitation as it arises. It gives no indication of the number of investigations and enforcement actions likely under the powers of the 'new' GLA. It is assumed that the GLA's licensing powers will not be extended to other sectors. Until these points are clarified, it is hard to express a view, so our response is 'not sure.'

Question 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?

There is again a lack of clarity: will the 'new' GLA take over HMRC's functions in relation to the National Minimum Wage, for example? Or only in cases where exploitation, rather than mistake or error is involved?

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

In principle, these look like good ideas, but we have a concern that businesses which do not sign up to voluntary schemes (which by definition go beyond legal requirements) could be targeted by the Authority.

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

In principle, yes, but we would be concerned if businesses which obeyed the law were put under pressure to purchase additional services from an enforcement authority.

Question 14: What other tasks might the new Authority perform?

We have no suggestions to make of additional tasks.

Question 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 NMW/NLW and employment regulations, where they are connected with labour exploitation?

Our concern (as under question 11) is that the dividing line between different enforcers will be unclear, for example, between HMRC and the 'new' GLA in relation to the NMW/NLW.

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

Only if there is no other enforcement body with power to investigate such offences.

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

The proposed powers under question 17 imply the creation of a new national police force and, if this is to happen, the exercise of those powers should be subject to Independent Police Complaints Commission supervision, as proposed in paragraph 124.

Question 18: Are there any additional powers the new Authority should have?

It is hard to think of any potential powers the consultation does not propose.

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

Yes.

Questions 20 to 22: Assistance from Relevant Organisations.

We have no comments on these questions.

Questions 23 to 26: GLA Licensing.

We have no comments on the existing licensing regime, which relies on the existence of 'gangmasters', a concept which does not exist in other sectors including hospitality, so it is not clear who would be licensable in sectors which do not have 'gangmasters'. We certainly see no reason for bringing the hospitality industry within the GLA licensing system.

Question 27: Governance Arrangements.

No comment.

Finally, I confirm that we have no objection to this response being made publicly available and that we should be pleased to take part in further discussions with BIS and the Home office if that would be helpful.

Yours faithfully,

**MARTIN COUCHMAN
DEPUTY CHIEF EXECUTIVE
BRITISH HOSPITALITY ASSOCIATION**