

**INFORMATION-SHARING
BETWEEN BODIES
RESPONSIBLE FOR ENFORCING
WORKPLACE RIGHTS**

Consultation on proposals to amend
the:

Employment Agencies Act 1973
National Minimum Wage Act 1998
Working Time Regulations 1998
Agricultural Wages Act 1948

OCTOBER 2009

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Introduction and summary of proposals

This consultation paper sets out government proposals for a Legislative Reform Order (LRO) to amend the legislation governing the sharing of information between the different agencies and departments that have responsibilities for enforcing workplace rights and related legislation. It is issued by the Department for Business, Innovation and Skills on behalf of the Minister for Employment Relations.

All workers in the UK benefit from a range of basic workplace rights and protections, with government taking a direct role in the enforcement of some of these rights. Enforcement responsibilities are split between a number of different departments and agencies. HM Revenue and Customs (HMRC), for example, enforces the national minimum wage (NMW) on behalf of the Department for Business, Innovation and Skills (BIS); the Health and Safety Executive (HSE) enforces aspects of the Working Time Regulations; the Employment Agency Standards inspectorate (EAS) enforces agency regulation.

The Government's Vulnerable Worker Enforcement Forum, which reported in August 2008, examined the effectiveness of the enforcement framework and identified possible improvements. Weaknesses identified included legal restrictions on the extent to which officers responsible for enforcing workplace rights can share relevant information obtained in the course of exercising their powers with each other.

In several cases, there are already satisfactory information-sharing gateways between the enforcement bodies. For example, there is a gateway between HMRC and the Department for Food and Rural Affairs (Defra) for minimum wage enforcement purposes, and gateways to and from the Gangmasters Licensing Authority (GLA). In addition, the Employment Act 2008 established a gateway permitting officers responsible for enforcing the national minimum wage and employment agency standards to supply information to each other.

However, barriers remain which constrict the extent to which officers can be 'eyes and ears' for each other and impede the scope for collaboration and joint inspection activity. They stand in the way of targeted and cost-effective enforcement of workplace rights on behalf of vulnerable workers. The government has made a commitment to addressing these barriers as soon as legislative time permits.

Summary of proposals

The proposed LRO will amend the Working Time Regulations 1998, the Employment Agencies Act 1973, the National Minimum Wage Act 1998, and the Agricultural Wages Act 1948¹ to:

- Permit officers responsible for enforcing the national minimum wage, the agricultural minimum wage and employment agency

¹ Links to this legislation and other key documents referred to in this document are provided at Annex A

regulation to supply information to the HSE and the other enforcement bodies responsible for enforcing the Working Time Regulations;

- Permit officers responsible for the enforcement of the agricultural minimum wage and those responsible for enforcing employment agency regulations to supply information to each other;
- Permit HMRC, EAS and the bodies responsible for enforcing Working Time Regulations to provide advice to the GLA on the suitability of applicants for a licence in the circumstances where persons are not already acting as a gangmaster; and
- Permit officers responsible for enforcing employment agency regulations to supply information to the bodies responsible for regulating the care and children's care sectors such as the Care Quality Commission and Ofsted.

We propose to introduce the reforms by means of a Legislative Reform Order under section 1(3) of the Legislative and Regulatory Reform Act 2006 (LRA). A summary of the legislative reform order-making powers is provided at Annex B.

Who will be interested in this consultation document?

These proposals will be of direct interest to the workplace enforcement bodies who – by having improved access to relevant information – will be able to carry out their work more efficiently by targeting inspections on businesses most likely to be non-compliant and reducing the extent to which information has to be collected more than once.

The proposals should improve the enforcement of workplace rights, thereby enhancing the protection of vulnerable workers and benefiting the big majority of compliant employers who will be less likely to be undercut by those prepared to break the law. They are therefore also likely to be of interest to advice bodies, unions, business and business representative organisations.

Subject to the outcome of public consultation and Parliamentary scrutiny, we propose that the changes are implemented from 6 April 2010.

How to respond to this consultation

A response form is included in this document at Annex C.

It is recommended that the form is completed online through survey monkey at: <http://tinyurl.com/ycx46j6>

Alternatively, you can send your completed response form by email to Infosharinglro@bis.gsi.gov.uk or by letter or fax to:

Sarah Elliott
BIS – Employment Relations Directorate
Bay 4107
1 Victoria Street
London SW1H 0ET

Tel: 020 7215 6399
Fax: 020 7215 0168

Responses to this consultation must be received by Thursday 17 December 2009².

The Legislative and Regulatory Reform Act 2006 requires Departments to consult widely on all LRO proposals. The list of consultees, including the devolved administrations, to which this document has been sent is shown at Annex D. However, comments are invited from all interested parties, and not just from those to whom the document has been sent.

Additional copies

You may make copies of this document without seeking permission. Further printed copies can be obtained from:

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<http://www.berr.gov.uk/consultations/page53064.html>

Disclosure and confidentiality

Details of representations received in response to this consultation will normally be disclosed, and respondents identified. While the LRA does provide for non-disclosure of representations, the Minister will include the names of all respondents in the list submitted to Parliament with the draft

² The standard 12 week consultation has been reduced – with Ministerial agreement - to 10 weeks given the limited nature of the proposed reforms, earlier discussion of the underlying policy in the Vulnerable Worker Enforcement Forum, and the fact that there will be no direct impact on business.

Order. The Minister is also obliged to disclose any representations that are requested by the relevant Parliamentary Scrutiny Committees. This is a safeguard against attempts to bring improper influence to bear on the Minister and, in practice, will be used only in exceptional circumstances.

If you request that your representation is not disclosed, the Minister will not be able to disclose the contents of your representation without your express consent and, if the representation concerns a third party, their consent too. Alternatively, the Minister may disclose the content of your representation but only in such a way as to anonymise it.

In all cases where your representation concerns information on a third party, the Minister is not obliged to pass it on to Parliament if he considers that disclosure could adversely affect the interests of that third party and he is unable to obtain the consent of the third party.

Please identify any information which you or any other person involved do not wish to be disclosed. Please note that any confidentiality disclaimer that may be generated by your organisation's IT system, or included as a general statement in your fax coversheet will be taken to apply only if accompanied by an additional specific request for confidentiality, such as an indication in the tick-box provided for that purpose in the response form.

Help with queries

Questions about policy issues raised in this document can be addressed to:

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Bay 4104
1 Victoria Street
London SW1H 0ET
Tel: 020 7215 0296
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Next steps

BIS will consider the responses received to this consultation and publish a summary of them. The LRO itself will be drafted later this autumn, and will take account of those views before it is laid before Parliament.

A note explaining the Parliamentary procedures for Legislative Reform Orders is provided at Annex E. There are opportunities to put views to the relevant Parliamentary Scrutiny Committees when the Minister lays proposals before Parliament.

Chapter 1: Background to the policy and legislation

1.1 Workers in the UK benefit from a range of basic workplace rights and protections such as the national minimum wage and the right not to be forced to work more than 48 hours a week. Some of these rights are directly enforced by government, others are for the individual to take forward, if necessary through a claim to an Employment Tribunal.

1.2 Responsibility for the government-enforced rights is split between a number of different departments and agencies, each with its own tightly defined role set out in five pieces of legislation: the Employment Agencies Act 1973; the National Minimum Wage Act 1998; the Working Time Regulations 1998; the Agricultural Wages Act 1948; and the Gangmasters (Licensing) Act 2004. The table below identifies the enforcement bodies concerned, and the rights and related protections that they enforce.

Table 1: Government enforcement bodies and rights enforced

Enforcement body	Rights and legislation enforced
HMRC	National minimum wage (on behalf of BIS)
Defra	Agricultural minimum wage
EAS – part of BIS	Employment agency standards
HSE – an NDPB* sponsored by DWP	Health and safety and working time**
GLA – an NDPB sponsored by Defra	Gangmaster licensing standards
* non-departmental public body ** - enforcement shared with Local Authorities and certain specialist sectoral regulators (eg the Civil Aviation Authority and the Vehicle and Operator Services Agency)	

1.3 The Government is committed to the effective enforcement of these rights, and in 2007 established the Vulnerable Worker Enforcement Forum under the chairmanship of the Employment Relations Minister. The Forum comprised business and union representatives, Citizens Advice and the enforcement bodies concerned. It examined the effectiveness of the existing enforcement framework and set out to identify possible improvements. The Forum's final report, together with the Government's conclusions, were published in August 2008³.

1.4 The Forum highlighted the need for closer collaboration between the five workplace enforcement bodies in order to achieve more effective enforcement. Close links are important in a number of respects. For example, all the bodies inspect workplaces, and come across information and intelligence about potentially non-compliant, high risk employers or agencies. There is therefore, significant scope for the enforcement bodies to act as 'eyes and ears' for each other, passing on suspicions of wider non-compliance to assist targeted enforcement work, and to identify cases where joint or co-ordinated investigations might be appropriate.

1.5 Close links of this kind require the enforcement bodies to be able to share relevant information. There are, however, constraints on the extent to which information can be shared which are set out in the relevant legislation

³ Links to the Forum report is provided at Annex A.

for each enforcement body referred to in paragraph 1.2 above. Information-sharing is not permitted unless there is a legal 'gateway'. Unauthorised disclosure without a gateway is generally a criminal offence or otherwise actionable.

1.6 A number of gateways already exist between the enforcement bodies. Officers responsible for enforcing the agricultural and the national minimum wage, for example, are able to share information. The gateways to and from the GLA are also generally satisfactory. In addition, a new gateway was established in the Employment Act 2008 allowing officers responsible for enforcing the national minimum wage and employment agency regulations to supply information to each other.

Table 2: Example of an information-sharing gateway

<p>Employment Act 2008 - Section 18</p> <p>(1) In the National Minimum Wage Act 1998 (c. 39), in section 15 (information obtained by officers), after subsection (5) there is inserted—</p> <p>“(5A) Information to which this section applies—</p> <p>(a) may be supplied by, or with the authorisation of, the Secretary of State to an officer acting for the purposes of the Employment Agencies Act 1973 for any purpose relating to that Act; and</p> <p>(b) may be used by an officer acting for the purposes of that Act for any purpose relating to that Act.”</p> <p>(2) In the Employment Agencies Act 1973, in section 9 (inspection), subsection (4) is amended as follows—</p> <p>(a) after “this section” there is inserted “(or pursuant to section 15(5A) of the National Minimum Wage Act 1998)”;</p> <p>(b) after paragraph (iv) there is inserted “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;”.</p>

1.7 Despite the existence of these gateways, several barriers remain which stand in the way of closer working. These are identified in turn, along with a brief assessment of the practical significance of the information-sharing deficiency.

National minimum wage officers

1.8 National Minimum Wage (NMW) officers have unsatisfactory information-sharing gateways with the HSE, local authorities and the other bodies responsible for enforcing the Working Time Regulations. This is a significant deficiency because NMW inspectors examine records and receive information relating to pay and hours worked which could have a bearing on whether a worker was working more than 48 hours a week on average. In addition, NMW officers are not able to supply information about the suitability

of applicants for a gangmaster licence unless they are already acting as a gangmaster in the GLA sectors.

Agricultural minimum wage officers

1.9 Agricultural minimum wage (AMW) officers have unsatisfactory information-sharing gateways with the HSE and the other bodies responsible for working time enforcement. As for NMW officers, this is a significant deficiency because they will examine information which relates to both hours and pay.

1.10 AMW officers are also unable to supply relevant information to the Employment Agency Standards Inspectorate. This is a less significant deficiency because AMW officers are only likely to encounter workers engaged by agencies who are or should be licensed by the GLA with whom there is already a satisfactory gateway. Nevertheless, employment agencies will often supply workers to a number of different sectors, some of which will be regulated by the EAS. Evidence of abuse in relation to an agricultural worker may be an indicator of wider abuses affecting agency workers being supplied to EAS-regulated sectors. We would be interested in views on whether there would be practical value in remedying this deficiency.

Working time inspectors

1.11 Working time inspectors have unsatisfactory information-sharing gateways with officers responsible for enforcing the national minimum wage, the agricultural minimum wage and employment agency standards. This is a significant deficiency because they inspect records and obtain information about hours worked which could indicate non-compliance with the NMW or a failure to pay agency workers for all the hours worked.

1.12 In addition, working time inspectors are not able to supply information about the suitability of applicants for a gangmaster licence unless they are already acting as a gangmaster in the GLA sectors. This is likely to be a less significant deficiency, relevant only where an employment business has been operating outside the GLA-regulated sectors, and wishes to expand its operations.

Employment agency standards inspectors

1.13 Employment Agency Standards (EAS) inspectors have unsatisfactory gateways with officers responsible for enforcing working time and the agricultural minimum wage. The absence of a satisfactory gateway with working time inspectors, in particular, is a significant deficiency because EAS inspectors will often encounter information about hours worked which could point to working time abuses.

1.14 In addition, they are not able to supply information about the suitability of applicants for a gangmaster licence unless they are already acting as a gangmaster in the GLA sectors. This is an important deficiency for the EAS because it regulates employment agencies in all sectors outside the GLA sectors, and may well have relevant information about the conduct of an

agency planning to expand its operations into GLA sectors such as food processing.

1.15 The EAS will sometimes inspect or investigate employment agencies and employment businesses, part of whose business is supplying workers to work with children or with vulnerable adults. Circumstances can arise where EAS inspectors become aware that employment agencies are not carrying out the checks that they are required to carry out to ensure the suitability of workers being supplied to work with these vulnerable groups. However, there is no gateway for the EAS to inform bodies such as the Care Quality Commission or Ofsted who enforce standards of care unless the EAS is itself considering prosecuting the agency for the breach. The circumstances when a gateway is needed are rare, but when they do arise, an inability to act could have serious consequences for children and vulnerable adults.

Table 3: Summary of existing information gateways, and where they need to be improved

Share with: →	HMRC	DEFRA	EAS	GLA	HSE (WTR)
HMRC		✓	✓	✓*	X
DEFRA	✓		X	✓	X
EAS	✓	X		✓*	X
GLA	✓	✓	✓		✓
HSE (WTR)	X	X	X	✓*	

✓ = Satisfactory gateway in place. X = gateway required.

* Generally satisfactory, but amendments required to allow enforcement bodies to advise the GLA on the suitability of applicants for a GLA licence where the applicant is not already operating as a gangmaster in the GLA-regulated sectors.

1.16 Following the work of the Forum, the government announced that it would take action – as soon as legislative time permitted – to tackle these legal barriers to information-sharing. Work to carry forward this and other recommendations from the Forum has been overseen by the Fair Employment Enforcement Board which has been meeting regularly since last autumn.

Anti-terrorism, Crime and Security Act 2001

1.17 We have considered the extent to which section 17 of the Anti-Terrorism, Crime and Security Act 2001 (ATCSA) would provide satisfactory gateways where that Act applies. Section 17 of the ATCSA clarifies and extends the disclosure of information for the purposes of criminal investigations and proceedings. It has been applied to the Employment Agencies Act 1973, but not to the Agricultural Wages Act 1948, nor to the Working Time Regulations 1998. Section 19 of the ATCSA provides a

gateway for HM Customs and Excise and the Inland Revenue which would include NMW officers.

1.18 The ATCSA creates a gateway allowing information to be disclosed to other public authorities if it is relevant for the purposes of any criminal investigations or proceedings, or the initiation of criminal investigations or proceedings. However, whilst useful in certain contexts, we consider that the ATCSA does not create a sufficiently open or bespoke gateway to encourage the joint working and closer collaboration that is needed to make the enforcement of employment rights more effective.

1.19 The ATCSA has two limitations which are significant in this context.

- Firstly, it is concerned with criminal proceedings and investigations. In respect of the National Minimum Wage and the Agricultural Minimum wage, there is a civil penalty regime alongside criminal offences. In fact, the big majority of NMW and AMW cases are dealt with through the civil enforcement regime. Since the introduction of the NMW, for example, there have been only 6 prosecutions. Where information is relevant to civil enforcement it would fall outside the ATCSA gateways and therefore prevent the sharing of information. Officers in other enforcement bodies considering supplying intelligence using the ATCSA would, with good reason, be wary of failing to meet the necessary test.
- Secondly, there is uncertainty about the extent to which the provisions permit an enforcement agency to be pro-active in supplying information to another body, in the absence of a specific request for information. The information that enforcement bodies wanting to work more closely together might want to supply would range from direct evidence of non-compliance which it might be possible to supply proactively (where there was confidence that it did relate to a criminal offence) through to less clear cut indicators of possible non-compliance where the adequacy of the gateway is much less certain and where lawyers and enforcement officers in the field will be significantly more cautious about supplying information on their own initiative.

Recent developments

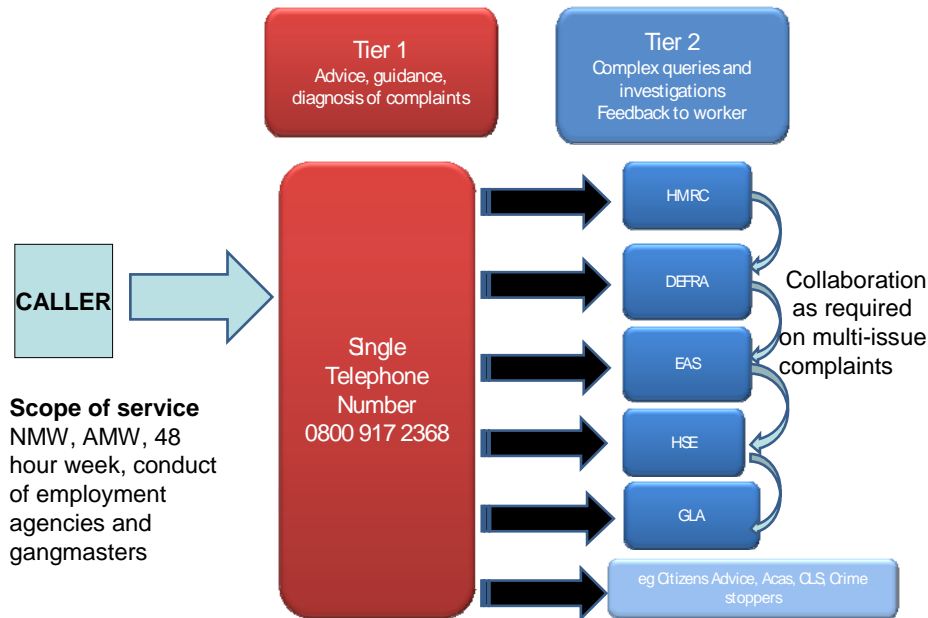
Consolidated enforcement helpline

1.20 One of the other key recommendations of the Vulnerable Worker Enforcement Forum was to establish a single enforcement helpline bringing together the helplines of the different enforcement bodies to provide a single entry point for workers wanting information, or wanting to report abuses.

1.21 This helpline – known as the Pay and Work Rights Helpline – became operational in May and was formally launched in September. Helpline operators are trained to diagnose potential abuses of all the government-enforced workplace rights, and to pass details about the abuses to the relevant enforcement body, or enforcement bodies for investigation and

possible enforcement action. The new helpline makes it significantly easier for workers to report abuses, and for government to respond.

PAY AND WORK RIGHTS LINE - DESIGN



1.22 The Pay and Work Rights Helpline is now handling a significant number of 'multi-issue' cases. These are callers seeking advice about more than one employment right, or making allegations which raise matters of interest for more than one enforcement body. This is creating an improved environment for joint inspections and joint enforcement activity, and provides strong supporting evidence that closer working between the enforcement bodies is important if enforcement activity is to be made more effective and efficient.

Table 4: Analysis of calls to the Pay and Work Rights Helpline (1 June - 31 August 2009)⁴

Total number of answered calls	Nos. of multi-issue calls	Nos. of multi-issue allegations referred to enforcement bodies
16,200	210	30

⁴ The figures shown are for a period predating the formal launch of the helpline in September and the start of a publicity campaign which is placing emphasis on the helpline capacity to handle multi-issue cases. This, plus the growing experience of the helpline in diagnosing such cases means that numbers are likely to rise both in absolute terms and as a percentage of total calls.

Summary of burdens to be reduced

1.23 Government believes that an LRO to address information sharing barriers will reduce the burdens set out below.

Financial costs

1.24 Undertaking an investigation is costly for each enforcement agency. Officers are required to take each complaint they receive seriously. Information gathering, such as a visit to the premises, or an inspection of records requires time and resource. If the EAS or HMRC, for example, obtained information that would be relevant to HSE⁵ it would reduce the cost of several agencies investigating one employer if they could share information with each other.

Administrative inconvenience

1.25 EAS and HMRC officers who obtain information which would be relevant to the other organisations already have an information gateway established under section 18 of the Employment Act 2008; however, they cannot pass on relevant material to the HSE. Similarly HSE cannot pass information to the EAS and HMRC. This is an administrative inconvenience for officers given that each of these organisations enforces workplace rights. Callers to the Pay and Work Rights Helpline, for example, are regularly making allegations involving both working time and national minimum wage abuses, but information sharing constraints hamper effective co-operation in the investigation of these and other complaints.

Obstacle to efficiency and productivity

1.26 The fact that information cannot be shared between certain government agencies (eg HSE with the EAS and HMRC, or the EAS with the GLA) hampers the efficient enforcement of key workplace rights. For example, valuable information and intelligence obtained by one enforcement body suggesting non-compliance in another area is not being passed on, representing an obstacle to the targeted and effective enforcement activity recommended in Philip Hampton's report, 'Reducing administrative burdens: effective inspection and enforcement', published in 2005. The scope for joint investigatory work and joint visits by two or more enforcement bodies is also hampered leading to inefficient duplication. In addition, the fact that the EAS cannot share information with the GLA about the suitability of applicants for a licence (except where the applicant is already acting as a gangmaster) is an obstacle to efficient vetting of potential licensees and could put workers' welfare at risk.

Criminal sanctions which affect the carrying on of a lawful activity

1.27 It is burdensome that a criminal or other sanction exists for HMRC, EAS, Defra and working time officers wanting to share relevant information with the HSE and vice versa. It stands in the way of more effective enforcement of workplace rights which will benefit vulnerable workers and the big majority of businesses who are compliant with the law.

⁵ References to HSE here and elsewhere should be taken as a reference to all the bodies responsible for WTR enforcement

Chapter 2: The proposals

2.1 The proposals fall under section 1 of the LRRRA which permit a Minister to make an LRO for the purpose of 'removing or reducing any burden, or overall burdens, resulting directly or indirectly for any person from any legislation'.

2.2 The Employment Agencies Act 1973, the National Minimum Wage Act 1998, the Agricultural Wage Act 1948 and the Working Time Regulations 1998 generally make it a criminal offence for information obtained in the course of exercising powers in the relevant legislation to be disclosed to others except where there is a specific gateway. The proposed LRO will amend this legislation to establish a limited set of new information-sharing gateways.

- Section 9 of the Employment Agencies Act 1973 is to be amended to permit the supply of information to officers enforcing the agricultural minimum wage, the regulations and bodies responsible for regulating the care and children's care sectors. The amendment will also permit the EAS to provide advice to the GLA on the suitability of applicants for a licence in the circumstances where persons are not already acting as a gangmaster.
- Section 15 of the National Minimum Wage Act 1998 is to be amended to permit the supply of information to officers enforcing the Working Time Regulations, and to permit officers to provide advice to the GLA on the suitability of applicants for a licence in the circumstances where persons are not already acting as a gangmaster.
- Section 15A of the Agricultural Wages Act 1948 is to be amended to permit the supply of information to officers enforcing the Working Time Regulations 1998 and the Employment Agencies Act 1973.
- Schedule 3 of the Working Time Regulations 1998 is to be amended to permit the supply of information by officers responsible for enforcing the Regulations to officers enforcing the Employment Agencies Act 1973, the National Minimum Wage Act 1998 and the Agricultural Wages Act 1948. It will also be amended to permit officers to provide advice to the GLA on the suitability of applicants for a licence where persons are not already acting as a gangmaster.

Impact and effect of the proposals

2.3 The proposed LRO will only have a direct effect on the limited set of enforcement bodies concerned, allowing them to undertake their activities more efficiently with the benefit of information provided by other agencies. The gateways being established are permissive. They place no obligation or duty on the enforcement bodies to identify and transfer information, and hence will entail no new administrative burden. The enforcement bodies already meet regularly as part of a best practice group, and we envisage practical

arrangements being developed by this group to make the best and most efficient use of the gateways.

2.4 It is not anticipated that the LRO will have a direct impact on business or others outside government, and the Partial Impact Assessment at Annex G states that the LRO will place no additional costs on business. It is expected, however, that there will be indirect effects and benefits. Greater availability of information should enable the enforcement bodies to make better use of their resources to target those who do not adhere to current employment regulations. This will benefit compliant businesses by reducing the likelihood of inspections and making them less likely to be undercut by non-compliant competitors. Vulnerable workers will benefit from more effective enforcement of basic employment rights.

Extent and devolution implications

2.5 The National Minimum Wage Act 1998 applies to the whole of the UK (England and Wales, Scotland and Northern Ireland). The Employment Agencies Act 1973 and the Working Time Regulations apply to Great Britain (England, Wales and Scotland). The Agricultural Wages Act applies in England and Wales only.

2.6 We propose (subject to the agreement of the devolved administrations in Wales, Scotland and Northern Ireland) to:

- Permit officers responsible for enforcing employment agency regulation and the Working Time Regulations in Great Britain to supply information to the Scottish Agricultural Wages Board for the purposes of enforcing the agricultural minimum wage in Scotland where appropriate;
- Permit officers responsible for enforcing the national minimum wage throughout the UK to supply information to the bodies in Northern Ireland responsible for enforcing the Working Time Regulations⁶; and
- Permit officers responsible for enforcing employment agency regulation in Great Britain to supply information to the enforcement authorities in Scotland and Wales with devolved responsibilities for regulating care and children's care sectors.

2.7 Reciprocal provisions are not possible without amendments to Scottish and Northern Ireland legislation. Such amendments are outside the scope of an LRO.

⁶ A gateway between HMRC and devolved Northern Ireland employment agency inspectors in the Department for Employment and Learning is not needed in the proposed LRO because the Employment Bill currently before the Northern Ireland Assembly will create the necessary gateway. It is expected to complete its Assembly stages by early 2010.

Related controversial issues

2.8 As there are currently information gateways between some of the enforcement bodies, we consider that it would be proportionate and consistent to extend these gateways to all the relevant enforcement bodies to provide for the effective enforcement of key workplace rights.

2.9 The LRO will affect only a limited set of enforcement agencies who are responsible for helping to protect the rights of individuals in the workplace, and does not seek to increase the existing enforcement powers enjoyed by each agency. We do not believe that the proposals are controversial and that they are proportionate to the policy objectives.

Binding the Crown

2.10 This proposal does not bind the Crown.

Recommended Parliamentary procedure

2.11 The responsible Minister can recommend one of three alternative procedures for Parliamentary scrutiny depending on the size and importance of the LRO. The negative resolution procedure is the least onerous and can be suitable for LROs delivering small regulatory reform. The super-affirmative procedure is the most onerous involving the most in-depth Parliamentary scrutiny. Although the Minister can make a recommendation, it is the Parliamentary Scrutiny Committees which have the final say about which procedure will apply. Further information about the different Parliamentary procedures is provided in Annex E.

2.12 The proposed Order is not intrinsically complex nor, we believe, controversial, and is limited in its effects. However, because these changes involve amending several pieces of primary legislation, as well as one piece of secondary legislation, the Department for Business, Innovation and Skills believes that an affirmative resolution procedure should apply to this LRO.

Chapter 3: Analysis of proposals against the requirements of the Legislative and Regulatory Reform Act 2006

Non-legislative solutions

3.1 The restrictions on sharing information that the proposed LRO seeks to address exist in either primary or secondary legislation. The only way to achieve the desired outcome is through legislative means.

Proportionality

3.2 The proposed change will not increase the powers of the relevant enforcement bodies or provide them with increased powers of entry and search, or increase the sanctions for non-compliance with employment law. It will allow the efficient transmission of information, within strictly defined parameters. We believe that the information sharing gateway will assist with the enforcement of employment rights without adding any additional burdens for compliant employers.

Fair balance

3.3 Shared information will allow each agency to be more efficient in its targeted inspection activity, and to carry out joint investigations where appropriate. Greater efficiency in enforcement activity will help create a 'fair playing field' for business, by making it more difficult for disreputable employers to flout the law and reducing the likelihood of inspection for compliant employers.

Necessary protection

3.4 The new information sharing gateways allow for the transmission of relevant information to a limited number of public bodies responsible for the enforcement of employment rights (or – in the case of Care Quality Commission – the protection of vulnerable individuals). The existing safeguards against unlawful disclosure where there is no legal gateway will remain. We do not believe that the proposals will remove any necessary protections.

Rights and freedoms

3.5 As the changes we propose are purely beneficial we do not believe that they would prevent anyone from exercising an existing right or freedom. We would welcome views as to whether we are correct in thinking that our proposals do not remove any rights or freedoms that anyone could reasonably expect to continue to enjoy.

Constitutional significance

3.6 None.

Annex A: List of key documents referred to in the consultation document

Vulnerable Worker Enforcement Forum – Final Report and Government Conclusions (August 2008)

www.berr.gov.uk/files/file47317.pdf

Working Time Regulations 1998

www.opsi.gov.uk/si/si1998/19981833.htm

Employment Agencies Act 1973

www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1973/cukpga_19730035_en_1

The Conduct of Employment Agencies and Employment Businesses Regulations 2003

www.opsi.gov.uk/si/si2003/20033319.htm#18

National Minimum Wage Act 1998

www.opsi.gov.uk/acts/acts1998/ukpga_19980039_en_1

Agricultural Wages Act 1948

[www.uk-](http://www.uk-legislation.hmsso.gov.uk)

[legislation.hmsso.gov.uk/RevisedStatutes/Acts/ukpga/1948/cukpga_19480047_en_1](http://www.uk-legislation.hmsso.gov.uk/RevisedStatutes/Acts/ukpga/1948/cukpga_19480047_en_1)

Gangmasters (Licensing) Act 2004

www.opsi.gov.uk/acts/acts2004/ukpga_20040011_en_1

Reducing administrative burdens: effective inspection and enforcement – Report by Philip Hampton 2005

www.hm-treasury.gov.uk/bud_bud05_hampton.htm

Annex B: Summary of Legislative Reform Order – making powers

Section 1

Under section 1 of the LRRRA a Minister can make an LRO for the purpose of 'removing or reducing any burden, or overall burdens, resulting directly or indirectly for any person from any legislation'. Section 1(3) of the LRRRA defines a 'burden' as:

- A financial cost;
- An administrative inconvenience;
- An obstacle to efficiency, productivity or profitability; or
- A sanction, criminal or otherwise, which affects the carrying on of any lawful activity.

Preconditions

Each proposal for an LRO must satisfy the following preconditions set out in section 3 of the LRRRA.

- Non-legislative solutions – An LRO may not be made if there are non-legislative solutions which will satisfactorily remedy the difficulty which the LRO is intended to address. An example of a non-legislative solution might be issuing guidance about a particular legislative regime.
- Proportionality – The effect of a provision made by an LRO must be proportionate to its policy objective. A policy objective might be achieved in a number of different ways, one of which may be more onerous than others and may be considered to be a disproportionate means of securing the desired outcome. Before making an LRO the Minister must consider that this is not the case and that there is an appropriate relationship between the policy aim and the means chosen to achieve it.
- Fair balance – Before making a LRO, the Minister must be of the opinion that a fair balance is being struck between the public interest and the interests of any person adversely affected by the LRO. It is possible to make an LRO which will have an adverse effect on the interests of one or more persons only if the Minister is satisfied that there will be beneficial effects which are in the public interest.
- Necessary protection – A Minister may not make an LRO if he considers that the proposals would remove any necessary protection. The notion of necessary protection can extend to

economic protection, health and safety protection, and the protection of civil liberties, the environment and national heritage.

- Rights and freedoms – An LRO cannot be made unless the Minister is satisfied that it will not prevent any person from continuing to exercise any right or freedom which they might reasonably expect to continue to exercise.
- Constitutional significance – A Minister may not make an LRO if he considers that the provision made by the LRO is of constitutional significance.

It should be noted that even where the preconditions of section 3 of the LRRRA are met, an LRO cannot:

- Deliver highly controversial proposals;
- Remove burdens which fall solely on Ministers or government departments, except where the burden affects the Minister or government department in the exercise of regulatory functions;
- Confer or transfer any function of legislating on anyone other than a Minister; persons or bodies that have statutory functions conferred on or transferred to them by an enactment; a body or office which has been created by the LRO itself;
- Impose, abolish or vary taxation;
- Create a new criminal offence or increase the penalty for an existing offence so that it is punishable above certain limits;
- Provide authorisation for forcible entry, search or seizure, or compel the giving of evidence;
- Amend or repeal any provision of Part 1 of the LRRRA;
- Amend or repeal any provision of the Human Rights Act 1998;
- Remove burdens arising solely from common law.

The questions set out in the response form attached at Annex C are designed to elicit the information that the Minister will need in order to satisfy the Parliamentary Scrutiny Committees that, among other things, the proposal satisfies these preconditions. For this reason, we would particularly welcome your views on whether and how each aspect of the proposed changes in this consultation document meets the preconditions.

Devolution

The LRA imposes certain restrictions regarding LROs and the devolution agreements.

- Scotland – A Minister cannot make an LRO under Part 1 of the LRA which would be within the legislative competence of the Scottish Parliament. This does not affect the powers to make consequential, supplementary, incidental or transitional provisions.
- Northern Ireland – A Minister cannot make an LRO under Part 1 of the LRA that amends or repeals any Northern Ireland legislation, unless it is to make consequential, supplementary, incidental or transitional provisions.
- Wales – The agreement of the Welsh Ministers is required for any provision in an LRO which confers a function upon the Welsh Ministers, modifies or removes a function of the Welsh Ministers, or restates a provision conferring a function upon the Welsh Ministers. The agreement of the National Assembly for Wales is required for any provision in an LRO which is within the legislative competence of the Assembly.

Annex C: Response form

Respondent Details	Please return by 17 December 2009 to:
<p>Name:</p> <p>Organisation:</p> <p>Address:</p> <p>Town/City:</p> <p>County/Postcode:</p> <p>Telephone:</p> <p>Email:</p> <p>Fax:</p>	<p>By survey monkey at: http://tinyurl.com/ycx46j6</p> <p>Alternatively you can send your response by email to: Infosharinglro@bis.gsi.gov.uk</p> <p>Or by post or fax to:</p> <p>Sarah Elliott BIS – Employment Relations Directorate Bay 4107 1 Victoria Street London SW1H 0ET</p> <p>Fax: 020 7215 0168</p>

Tick this box if you are requesting non-disclosure of your response.

Please state if you are responding as an individual or representing the views of an organisation by ticking the box below that best describes you as a respondent to the consultation.

<input type="checkbox"/>	Business representative organisation/trade body
<input type="checkbox"/>	Central government
<input type="checkbox"/>	Charity or social enterprise
<input type="checkbox"/>	Individual
<input type="checkbox"/>	Legal representative
<input type="checkbox"/>	Local Government
<input type="checkbox"/>	Micro business (up to 9 staff)
<input type="checkbox"/>	Small business (10 to 49 staff)
<input type="checkbox"/>	Medium business (50 to 250 staff)
<input type="checkbox"/>	Large business (over 250 staff)
<input type="checkbox"/>	Family / Parent Representative Organisations
<input type="checkbox"/>	Trade union or staff association
<input type="checkbox"/>	Other (please describe):

If responding on behalf of a company or an organisation, please make it clear who the organisation represents and, where applicable, how the views of the members were assembled.

Question 1: Do you think the proposals will remove or reduce burdens as explained in 1.23 – 1.27 of the consultation document?

Yes [] No []

Please provide reasons for your response

Question 2: Are there any other information sharing barriers which, in your view, should be addressed to reduce or remove burdens resulting from legislation?

Question 3: Do you have views regarding the expected benefits of the proposals as identified in Chapter 1 of the consultation document and addressed in the Partial Impact Assessment attached at Annex G?

Question 4: Is there any empirical evidence that you are aware of that supports the need for these reforms? If so, please provide details.

Question 5: Are there any non-legislative means that would satisfactorily remedy the difficulty which the proposals intend to address?

Question 6: Are the proposals put forward in the consultation document proportionate to the policy objective?

Yes [] No []

Please provide reasons for your response

Question 7: Do the proposals put forward in the consultation document taken as a whole strike a fair balance between the public interest and any person adversely affected by it?

Yes [] No []

Please provide reasons for your response

Question 8: Do the proposals put forward in the consultation document remove any necessary protection?

Yes [] No []

Please provide reasons for your response

Question 9: Do the proposals put forward in the consultation prevent any person from continuing to exercise any right or freedom which he might reasonably expect to continue to exercise, as explained in Chapter 3? If so, please provide details.

Yes [] No []

Please provide reasons for your response

Question 10: Do you consider the provisions of the proposal to be constitutionally significant?

Yes [] No []

Please provide reasons for your response

Question 11: Do you have any views about which of the Parliamentary resolution procedures described in Annex E (negative, affirmative or super-affirmative) should apply to this LRO?

Thank you for taking the time to let us have your views.

Annex D: List of consultees

Acas
ACCORD
Association of Labour Providers
Bakers, Food and Allied Workers' Union
British Chambers of Commerce (BCC)
British Retail Consortium
Care Quality Commission
Chartered Institute of Personnel and Development
Citizens Advice (CA)
Civil Aviation Authority (CAA)
Confederation of British Industry (CBI)
Department for the Environment, Food and Rural Affairs (Defra)
Department of Justice
Employment Agency Standards inspectorate (EAS)
Employment Law Bar Association
Employment Lawyers Association
Engineering Employers' Federation (EEF)
Eversheds Solicitors
Federation of Small Businesses (FSB)
Gangmasters Licensing Authority (GLA)
GMB
Health and Safety Executive (HSE)
Her Majesty's Revenue and Customs (HMRC)
Institute of Directors (IoD)
Law Society
Local Authority Coordination of Regulatory Services (LACORs)
Local Government Association
Maritime and Coast Guards Agency
National Assembly of Wales
National Farmers Union
Northern Ireland Assembly
OFSTED
Recruitment and Employment Confederation (REC)
Scottish Executive
Scottish TUC
The Bar Council
The Employment Agent's Movement (TEAM)
The Law Society Scotland
Trades Union Congress (TUC)
Union of Shop, Distributive & Allied Workers
UNISON
Unite
Vehicle and Operator Services Agency (VOSA)
Wales TUC
Working Lives Research Institute

Annex E: Explanation of the Parliamentary Procedures for Legislative Reform Orders

Introduction

1. The proposals in this consultation document will require changes to both primary and secondary legislation. These can be achieved by making a Legislative Reform Order (LRO) under the Legislative and Regulatory Reform Act 2006 (LRRRA).
2. LROs are subject to preliminary consultation and to rigorous Parliamentary scrutiny by Committees in each House of Parliament.

Procedure for Legislative Reform Order Proposals

3. This consultation document has been published because the starting point for LRO proposals is thorough and effective consultation with interested parties. In undertaking this preliminary consultation, the Minister is expected to seek out actively the views of those concerned, including those who may be adversely affected, and then to demonstrate to the Scrutiny Committees that he or she has addressed those concerns.
4. Following the consultation exercise, when the Minister lays proposals before Parliament under the section 14 of Legislative and Regulatory Reform Act 2006, he or she must lay before Parliament an Explanatory Document which must:
 - (i) Explain under which power or powers in the LRRRA the provisions contained in the order are being made;
 - (ii) Introduce and give reasons for the provisions in the Order;
 - (iii) Explain why the Minister considers that:
 - There are no non-legislative solutions which will satisfactorily remedy the difficulty which the provisions of the LRO are intended to address;
 - The effect of the provisions are proportionate to the policy objective;
 - The provisions made in the Order strike a fair balance between the public interest and the interests of any person adversely affected by it;
 - The provisions do not remove any necessary protection;
 - The provisions do not prevent anyone from continuing to exercise any right or freedom which they might reasonably expect to continue to exercise;
 - The provisions in the proposal are not constitutionally significant; and

- Where the proposals will restate an enactment, it makes the law more accessible or more easily understood.
- (iv) Include, so far as appropriate, an assessment of the extent to which the provision made by the order would remove or reduce any burden or burdens;
 - (v) Identify and give reasons for any functions of legislating conferred by the order and the procedural requirements attaching to the exercise of those functions; and
 - (vi) Give details of any consultation undertaken, any representations received as a result of the consultation and the changes (if any) made as a result of those representations.

4. The period for Parliamentary consideration begins on the day the Minister lays the proposals and explanatory document. This lasts 40 days under negative and affirmative resolution procedure and 60 days under super-affirmative resolution procedure. If you want a copy of the proposals and the Minister's explanatory document laid before Parliament, you will be able to obtain them either from the Department for Business, Innovation and Skills, or by visiting the Better Regulation Executive website at:

<http://bre.berr.gov.uk/regulation/reform/bill/>

Parliamentary scrutiny

5. Both Houses of Parliament scrutinise legislative reform proposals and draft LROs. This is done by the Regulatory Reform Committee in the House of Commons and the Delegated Powers and Regulatory Reform Committee in the House of Lords.

6. Standing Orders for the Regulatory Reform Committee in the Commons stipulate that the Committee considers whether proposals:

- a) appear to make an inappropriate use of delegated legislation;
- b) serve the purpose of removing or reducing a burden, or the overall burdens, resulting directly or indirectly for any person from any legislation (in respect of a draft Order under section 1 of the Act);
- c) serve the purpose of securing that regulatory functions are exercised so as to comply with the regulatory principles, as set out in section 2(3) of the Act (in respect of a draft Order under section 2 of the Act);
- d) secure a policy objective which could not be satisfactorily secured by non-legislative means;
- e) have an effect which is proportionate to the policy objective;
- f) strike a fair balance between the public interest and the interests of any person adversely affected by it;
- g) do not remove any necessary protection;

- h) do not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise;
- i) are not of constitutional significance;
- j) make the law more accessible or more easily understood (in the case of provisions restating enactments);
- k) have been the subject of, and takes appropriate account of, adequate consultation;
- l) give rise to an issue under such criteria for consideration of statutory instruments laid down in paragraph (1) of Standing Order No 151 (Statutory Instruments (Joint Committee)) as are relevant, such as defective drafting or failure of the department to provide information where it was required for elucidation;
- m) appear to be incompatible with any obligation resulting from membership of the European Union;

7. The Committee in the House of Lords will consider each proposal in terms of similar criteria, although these are not laid down in Standing Orders.

8. Each Committee might take oral or written evidence to help it decide these matters, and each Committee would then be expected to report.

9. Copies of Committee Reports, as Parliamentary papers, can be obtained through HMSO. They are also made available on the Parliament website at:

- Regulatory Reform Committee in the Commons; and
- Delegated Powers and Regulatory Reform Committee in the Lords.

10. Under negative resolution procedure, each of the Scrutiny Committees is given 40 days to scrutinise an LRO, after which the Minister can make the Order if neither House of Parliament has resolved during that period that the Order should not be made or to veto the LRO.

11. Under affirmative resolution procedure, each of the Scrutiny Committees is given 40 days to scrutinise an LRO, after which the Minister can make the Order if it is not vetoed by either or both of the Committees and it is approved by a resolution of each House of Parliament.

12. Under super-affirmative procedure each of the Scrutiny Committees is given 60 days to scrutinise the LRO. If, after the 60 day period, the Minister wishes to make the Order with no changes, he may do so only after he has laid a statement in Parliament giving details of any representations made and the LRO is approved by a resolution of each House of Parliament. If the Minister wishes to make changes to the draft LRO he must lay the revised LRO and as well as a statement giving details of any representations made during the scrutiny period and of the proposed revisions to the Order, before

Parliament. The Minister may only make the Order if it is approved by a resolution of each House of Parliament and has not been vetoed by either or both relevant Committees.

13. Under each procedure, the Parliamentary Scrutiny Committees have the power to recommend that the Minister not make the LRO. If one of the Parliamentary Committees makes such a recommendation, a Minister may only proceed with it if the recommendation is overturned by a resolution of the relevant House.

How to make your views known

14. Responding to this consultation document is your principle opportunity to make your views known to the relevant department. However, when the Minister lays proposals before Parliament you are welcome to put your views before either or both of the Scrutiny Committees.

15. In the first instance, this should be in writing. The Committees will normally decide on the basis of written submissions whether to take oral evidence.

16. Your submission should be as concise as possible, and should focus on one or more of the criteria listed in paragraph 6 above.

17. The Scrutiny Committees are appointed to scrutinise Legislative Reform Orders.

Non-disclosure of responses

18. Section 14(3) of the LRRRA provides what should happen when someone responding to the consultation exercise on a proposed LRO requests that their response should not be disclosed.

19. The name of the person who has made representations will always be disclosed to Parliament. If you ask for your representation not to be disclosed, the Minister should not disclose the content of that representation without your express consent and, if the representation relates to a third party, their consent too. Alternatively, the Minister may disclose the content of the representation in such a way as to preserve your anonymity and that of any third party involved.

Information about third parties

20. If you give information about a third party which the Minister believes may be damaging to the interests of that third party, the Minister does not have to pass on such information to Parliament if he does not believe it is true or he is unable to obtain the consent of the third party to disclosure. This applies whether or not you ask for your representation not to be disclosed.

21. The Scrutiny Committees may, however, be given access on request to all representations as originally submitted, as a safeguard against improper influence being brought to bear on Ministers in their formulation of legislative reform orders.

Annex F: Consultation Code of Practice

1. Formal consultation should take place at a stage when there is scope to influence policy outcome.
2. Consultation should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
3. Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
4. Consultation exercise should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
5. Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
6. Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
7. Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

Comments or complaints

If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to:

Tunde Idowu,
BIS Consultation Co-ordinator,
1 Victoria Street,
London
SW1H 0ET

Telephone Tunde on 020 7215 0412

or email to: Babatunde.Idowu@bis.gsi.gov.uk

Annex G: Partial Impact Assessment

Summary: Intervention & Options

Department /Agency: BIS	Title: Impact Assessment of permitting the sharing of information between workplace rights enforcement bodies.	
Stage: Consultation	Version: Final	Date: 5 October 2009
Related Publications:		

Available to view or download at:

www.berr.gov.uk/files/file53063.pdf

Contact for enquiries: Craig Barratt

Telephone: (020) 7215 3542

What is the problem under consideration? Why is government intervention necessary?

The Government is committed to effective enforcement of the rights of workers under UK law. Enforcement of these rights is shared between various regulators. There are some information gateways set out in the relevant legislation permitting the sharing of information between them, but barriers remain. There is, for example, no gateway to and from the bodies responsible for enforcing the Working Time Regulations. Information sharing is necessary to ensure regulators are able to inform other regulators when potential non-compliance is found for which it is not the responsible body.

What are the policy objectives and the intended effects?

The intended effects are to reduce the costs of enforcement by permitting the sharing of information and reducing the need for multiple inspections. The policy will reduce administrative inconvenience for Government and business by allowing the sharing of data and avoiding the need for unnecessary information gathering. The policy will also help improve efficiency and productivity of enforcement organisations by helping enforcement agencies coordinate targeted operations on employers most likely to be non-compliant to produce effective enforcement of workers rights.

What policy options have been considered? Please justify any preferred option.

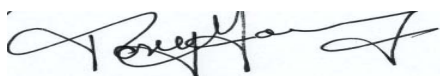
The implementation of a Legislative Reform Order (LRO) has been considered against a do nothing option. The LRO includes amendments to the Employment Agencies Act 1973, the National Minimum Wage Act, the Working Time Regulations 1998 and the Agricultural Wages Act 1948 that will enable information to be shared more effectively to enhance the enforcement of workplace rights. The LRO is the preferred option as it meets the intended effects of the policy more than the do nothing approach.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? The costs and benefits will be reviewed when data on the efficacy of the policy is available, including further data from the Pay and Work Rights helpline and enforcement data from each organisation.

Ministerial Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:



Lord Young of Norwood Green

Date: 6 October 2009

Summary: Analysis & Evidence

Policy Option:	Description:
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups' There would be a small increase in prosecution costs if more organisations are found to be non compliant. These have not been quantified. None of these costs would arise under 100% compliance with existing regulations			
	One-off (Transition) Yrs		1		
	£ 0				
	Average Annual Cost (excluding one-off)				
	£ 0	Total Cost (PV)	£ 0		
Other key non-monetised costs by 'main affected groups'					

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups' Efficiency savings from increased availability of information (£176,000) Decreased administrative burden on business due to a reduction in unnecessary information gathering (£28,800)			
	One-off Yrs		1		
	£ 0				
	Average Annual Benefit (excluding one-off)				
	£ 190,648	Total Benefit (PV)	£ 1.9m		
Other key non-monetised benefits by 'main affected groups' Greater compliance with existing regulations, more unquantifiable benefits such as greater protection for vulnerable workers and protection for reputable employers against those who are non-compliant.					

Key Assumptions/Sensitivities/Risks

Price Base Year 2009	Time Period Years 10	Net Benefit Range (NPV) £ N/A	NET BENEFIT (NPV Best estimate) £ 1.9m
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What is the geographic coverage of the policy/option?	Eng/Wal/Scot
On what date will the policy be implemented?	01/04/2010
Which organisation(s) will enforce the policy?	N/A
What is the total annual cost of enforcement for these organisations?	£ nil
Does enforcement comply with Hampton principles?	Yes
Will implementation go beyond minimum EU requirements?	No
What is the value of the proposed offsetting measure per year?	£ N/A
What is the value of changes in greenhouse gas emissions?	£ N/A
Will the proposal have a significant impact on competition?	No
Annual cost (£-£) per organisation (excluding one-off)	Micro Small Medium Large
Are any of these organisations exempt?	No No N/A N/A

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)
Increase of £	Decrease of £ 28,800	Net Impact £ -28,800

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Evidence Base (for summary sheets)

A: Background

The Government is committed to enforcing the rights of workers held under the Employment Agencies Act 1973 (the EA Act), the National Minimum Wage Act 1998 (the NMW Act) the Working Time Regulations 1998 (the WTR) and the Agricultural Wages Act 1948 (the AW Act).

These rights are enforced through a number of separate government organisations whose functions are summarised below:

- Employment Agencies Inspectorate (EAS): obtains information relating to the conduct of employment agencies and businesses to ensure they comply with the Conduct of Employment Agencies and Employment Businesses Regulations 2003 as amended.
- Her Majesty's Revenue and Customs (HMRC): obtains information regarding the payment of the national minimum wage to workers.
- Department for Environment, Food and Rural Affairs (DEFRA): obtains information regarding the payment of the agricultural minimum wage to workers.
- Health and Safety Executive (HSE), Local Authorities (LAs), the Civil Aviation Authority (CAA) and the Vehicle and Operators Services Agency (VOSA): obtain information on employers to assess compliance with working time, depending on the sector concerned.

During the exercise of their functions these organisations obtain information which would be relevant to other organisations for the purposes of enforcing different workplace rights. In addition, the introduction of a new Pay and Work Rights Helpline has emerged as a source of useful information that is also relevant to the functions of these bodies.

The Pay and Work Rights Helpline is a confidential helpline providing help and advice on government-enforced employment rights or an avenue for people to report allegations of workplace abuse. The helpline takes the place of five separate helplines and provides information on national minimum wage rights, agricultural minimum wage rights, and workers rights under the Working Time Regulations. The helpline also provides information about the employment rights that apply if you are paid by an employment agency or gangmaster.

The helpline is now diagnosing, and referring, a significant number of multi-issue allegations (i.e. those where the allegations raise matters of interest for more than one enforcement body). This is creating an improved environment for joint inspections and joint enforcement activity which is hampered by the legal constraints on sharing information.

B: The Issue

There are some information gateways which permit the sharing of information between enforcement bodies. There are, for example, gateways between HMRC and DEFRA for minimum wage enforcement purposes, and generally satisfactory gateways to and from the Gangmasters Licensing Authority. In addition, an amendment to the EA Act and the NMW Act contained in s18 of the Employment Act 2008 created a gateway permitting EAS and HMRC to pass information to each other which would be relevant to their enforcement powers.

However, there is no information gateway for EAS, HMRC or DEFRA to share relevant information with the HSE, Local Authorities or the other specialist organisations responsible for enforcing the WTR, except in the narrow circumstances where gateways created by the Anti-Terrorism, Crime and Security Act may apply. Conversely, there is no information gateway for working time inspectors to pass relevant information to EAS, DEFRA or HMRC. To do so would be a criminal offence committed by the relevant officers. Other restrictions are:

- An inability for the EAS and HMRC to supply advice to the Gangmasters Licensing Authority on the suitability of an applicant for a licence where the applicant is not already operating as a gangmaster;
- An inability for EAS to supply information to DEFRA for agricultural minimum wage purposes and vice versa; and
- An inability for EAS to supply information to the bodies responsible for regulating the care and children's care sectors if it becomes aware that an employment agency is not carrying out the checks on the suitability of workers supplied to work with vulnerable people unless the EAS is itself considering a prosecution.

C: Objectives

The policy will seek to achieve to achieve the implementation of an information gateway with the objective of reducing the following burdens:

(i) Financial cost:

Undertaking an investigation is costly for each enforcement agency. Officers are required to take each complaint they received seriously. Information gathering such as a visit to the premises and an inspection of records all take time and money. If the EAS or HMRC obtains information that would be relevant to HSE⁷ it would reduce the cost of several organisations investigating one employer if they could share information with each other.

(ii) Administrative inconvenience:

EAS and HMRC officers who obtain information which would be relevant to the other organisations have an information gateway; however, they cannot

⁷ References to HSE should be taken as a reference to all the bodies responsible for WTR enforcement.

pass on relevant material to the HSE. Similarly HSE cannot pass information to the EAS and HMRC. This is an administrative inconvenience for officers given that each of these organisations enforces workplace rights. Callers to the Pay and Work Rights Helpline, for example, are regularly making allegations involving both working time and national minimum wage abuses, but information sharing constraints hamper effective co-operation in the investigation of these complaints.

(iii) Obstacle to efficiency and productivity:

The fact that information between government organisations cannot be shared (e.g. HSE with the EAS and HMRC) hampers the effective enforcement of key workplace rights. Valuable information and intelligence about possible wider non-compliance is not being passed on, representing an obstacle to targeted enforcement activity and joint working.

(iv) Criminal sanctions which affect the carrying on of a lawful activity:

It is burdensome that a criminal or other sanction exists for HMRC, EAS, HSE and Defra officers wanting to share relevant information. It is envisaged that the criminal sanction is removed only for the purposes of information sharing between this set of enforcement bodies and the GLA.

D: Options

Option 1: Do nothing

Option 2: Implementation of a Legislative Reform Order that has the effect of:

Amending section 9 of the EA Act to provide for a subsection permitting the disclosure of information to the HSE and LAs and other specialist regulators responsible for enforcing the WTR, and to DEFRA for agricultural minimum wage purposes.

Amending section 9 of the EA Act to permit the EAS to provide advice to the Gangmasters Licensing Authority about the suitability of applicants for a GLA licence in circumstances where they are not operating as gangmasters in the GLA-regulated sectors.

Amending section 9 of the EA Act to permit the disclosure of information to bodies responsible for regulating the care and children's care sectors such as the Care Quality Commission (established under the Health and Social Care Act 2008) when the EAS becomes aware that employment agencies are not carrying out checks on the suitability of workers being supplied to work with vulnerable people.

Amending section 15 of the NMW Act to permit the supply of information to the organisations responsible for enforcing the Working Time Regulations (e.g. HSE and Local Authorities), and to permit advice to be given to the GLA about the suitability of license applicants not already operating as gangmasters.

Amending section 15A of the AW Act to provide for a subsection that permits the disclosure of information to the EAS and also to

the HSE, Local Authorities and other specialist regulators who are responsible for enforcing the WTR.

Amending paragraph 8 of Schedule 3 of the WTR to permit the supply of information to EAS, HMRC and DEFRA for the functions under the EA Act, NMW Act and AW Act. Secondary legislation divides the enforcement of the WTR between the HSE, LAs, VOSA and CAA⁸. To permit these authorities to share information if it is only necessary to amend the WTR

Option 2 is assessed against the baseline do nothing option.

E: Analysis of options

Option 1

Under this option the organisations EAS, HMRC and DEFRA would be unable to share information with the HSE Local Authorities and other organisations responsible for the enforcement of the WTR and vice versa.

The implications of this are that the financial costs of repeated inspections will continue to be incurred and the administrative inconvenience will remain. The current legislation will continue to put in place obstacles to efficiency by restricting the opportunities for targeted joint activities between organisations and restricting the extent to which enforcement bodies can pass on suspicions of wider abuses to other enforcement bodies.

Option 2

The HSE, LA's, VOSA and CAA are responsible for the enforcement of the WTR. The HSE have a total of 1,323 front line inspectors who issued approximately 7,715 enforcement notices⁹ to organisations in the financial year 2007/08. In addition, LA's served a total of 6,010 enforcement notices under various parts of their powers under the health and safety legislation.

However, HSE statistics show that only three enforcement notifications cited the WTR being the regulations that the notice had been issued under¹⁰. This small number of enforcement notices may be due to differing priorities of a limited number of inspectors who have enforcement powers under more than 50 separate regulations. In addition the lack of intelligence is also likely to be a factor.

Although enforcement notices issued under the Working Time Regulations are low this does not lead to the assumption that most organisations are compliant with the regulations. The Employment Tribunal Service (ETS)

⁸ Health and Safety (Enforcing Authority) Regulations 1998 provide for the division of responsibility with Local Authorities

⁹ Enforcement notices can be issued in three categories, improvement, deferred prohibition and immediate prohibition and are issued to non-compliant organizations.

¹⁰ HSE Enforcement Statistics www.hse.gov.uk/statistics/indexoftables.htm

annual statistics show that in 2007/08 there were 55,71211 employment tribunal claims accepted where the nature of the claim involved the WTR12.

The Legislative Reform Order (LRO) will provide benefits to the HSE's enforcement function by making available more information held by other enforcement bodies. This will enable the HSE and other WTR inspectors to target offenders in a more cost effective way.

Analysis of benefits

(i) Efficient use of information to target inspections

Data on the number of inspections specifically relating to the WTR are unavailable and data on the number of inspections conducted by the HSE are only available for the years 2001 to 2003. Due to the lack of data it is difficult to ascertain the extent of enforcement of the WTR and thus the impacts of the LRO on enforcement operations. Therefore some assumptions are made in the assessment of the potential benefits of the LRO.

The Pay and Work Rights helpline is an avenue for people to raise issues regarding their rights at work. Some complaints fall under the jurisdiction of multiple organisations which would require them to share information about the case. The LRO would enable the organisations to share information which would allow them to co-ordinate their investigatory work, and remove or reduce the need for separate inspections by different organisations.

Table 1 shows the estimated benefits of the LRO by allowing the sharing of information between HMRC and the HSE. HMRC is the only organisation shown as the number of multi-issue cases that require further investigation involving other enforcement organisations is too small for a reliable estimate.

Table1 – Estimated benefits of the LRO based on issues raised to the Pay and Work Rights helpline

	Issues raised per year ^a	Total cost of inspections (£'000) ^{bc}	Inspections needed to achieve an equivalent number of issues ^d	Total Cost (£'000)	Savings (£'000)
HMRC	90	38	407	172	134

a - 12 month estimate based on calls received in June and July 2009 to the Pay and Work Rights helpline which involved the HMRC and the HSE (Annex A).

b - estimated labour costs of inspectors are based on known labour costs of EAS inspectors divided by average inspections by HSE over the period 2001-03

c - the total cost of inspections = cost per inspection x issues raised per year

d - issues raised per year divided by strike rate. The strike rate is calculated by the number of issued enforcement notices divided by the number of inspections over the period 2001-03 by the HSE

The issues shown in table 1 are classified as issues that are covered by more than one enforcement organisation and will require follow up investigations. The total cost of inspections shows the estimated cost of inspecting these 90 cases that have been raised. If this prior information from the helpline was not

¹¹ The figure for 2007/08 includes 10,000 claims from airline employees that have been submitted a number of times.

¹² Employment Tribunal Statistics (2008) -

www.employmenttribunals.gov.uk/Documents/Publications/EmploymentTribunal_and_EAT_Statistics_v9.pdf

available, to uncover the equivalent number of issues 407 inspections would have to be made (explained in footnote d) at a cost of 172 thousand pounds. This assumes that all 90 cases would result in non compliance and therefore the savings indicate the upper limit of the estimated savings that could be made.

It is assumed that the costs of inspections are similar across all enforcement organisations and as inspections are led by a different organisation in different cases that savings would also be spread across each of the organisations.

This estimate is based on a strike rate of 22 per cent calculated by the number of enforcement notices issued by the HSE divided by the number of inspections conducted over the period 2001-03 (Annex A). Unfortunately, data on the number of inspections is no longer published therefore it is assumed that the average strike rate over this period is applicable in 2009. In addition, due to the lack of data regarding the number inspections into the WTR it is assumed that the strike rate is the same for inspections under the WTR.

The helpline provides a valuable source of information on which to target inspections which will be facilitated by the LRO. Equally, the LRO will enable information from organisations' existing enforcement functions to be shared. For example, HMRC enforcement is initiated either by a complaint from workers or third parties, or as a result of risk assessment (including targeted enforcement of key low paying sectors). If during an investigation into an offence under the NMW Act it transpires a potential offence may be likely under the WTR then this information can be passed to the relevant enforcement organisation. The same would be true the other way round. Information discovered by a working time inspector suggesting that NMW or EAS regulations were being breached could be passed on to the relevant enforcement body.

Table 2 shows the estimated benefits the LRO will introduce due to the increased cooperation between enforcement organisations. This is a separate benefit to table 1 which shows information from the Pay and Work Rights helpline which may not have been captured in each organisations usual enforcement operations.

Table2 – Estimated benefits of the LRO from increased cooperation between enforcement organisations

	Inspections 2007/08	Proportion of cases involving the HSE ^a	Number of cases involving the HSE	Estimated cost of investigating these cases (£'000) ^b
HMRC	4,473	5.0%	222	28
EAS	1,632	6.5%	106	13
DEFRA	nd	5.1%	nd	Nd
Total	6,105		327	42

Source: HMRC Inspections: National Minimum Wage Evidence Paper, Department for Business Innovation and Skills, 2008 www.berr.gov.uk/files/file49011.pdf

EAS Inspections: Employment Agency Standards Inspectorate Annual Report, 2007/08 www.berr.gov.uk/files/file49464.pdf

a - proportion is estimated from the number a multi-agency complaints involving the HSE divided by the total number of complaints for each organisation (Annex A)

b - number of cases involving the WTR multiplied by the cost per inspection used in table 1.

nd = no data

Table 2 shows the number of inspections which took place in 2007/08 by different enforcement organisations and the number of cases that would likely have also involved complaints made under the WTR. The information collected from these inspections could be shared under the proposed LRO, thus reducing the need for a second inspection and reducing costs (shown in the final column). Inspections may still need to occur even when prior information has been provided by another enforcement organisation therefore we have assumed that the number of inspections will be reduced by approximately 30 per cent. This is included in the estimated cost saving.

The table shows the estimated cost of an inspection by the HSE which could be saved by allowing an information gateway between other enforcement organisations and the HSE. While this is indicative of the potential benefits of a flow of information to the HSE, it has not been possible to quantify the benefits that could be made by other enforcement organisations from information provided by the HSE's existing enforcement operations. This is due to not having a reliable figure for the number of inspections into alleged non-compliance with the WTR and therefore the volume of information which is likely to be available for other enforcement organisations.

An increase in inspections based on targeted information is likely to increase the revenues from fines related to WTR offences. It is not possible to estimate the monetary value of any increase in fines or convictions as this is based on a case by case basis and fines will differ depending on each outcome. The maximum fine under the WTR is £20,000.

(ii) Reduced burden on business

If an inspection is made by an enforcement agency and it is suspected that an offence may have occurred or is occurring under the WTR then the HSE would have to conduct a second inspection due to restrictions on the sharing of information.

This repeated inspection causes a burden on the business due to the regulations in place. By reducing this burden the two enforcement organisations would be able to share information about the case which will reduce, or remove, the need for a second inspection.

The Admin Burdens Measurement Exercise published by the Department for Trade and Industry (now Department for Business, Innovation and Skills) in 2006 estimates the admin burden of the WTR requirement of businesses to allow inspections to take place at a cost of £96,000 (This is the total admin burden of the regulation, not a cost per inspection).

Table 1 estimates a reduction in inspections where no prior information is available of approximately 78 per cent. The LRO will not cause this reduction as spot check inspections are still necessary to ensure that offences are found when not reported. In addition, inspections may still need to occur even when prior information has been provided by another enforcement organisation. Due to these reasons it is estimated that the admin burden will be reduced by approximately 30 per cent to £67,200.

(iii) Benefits to vulnerable workers

The purpose of the proposed LRO is to allow the sharing of information between enforcement organisations with the overall aim of providing a more efficient and effective structure of protection for workers. If the LRO is effective then potentially law breaking employers will face a greater chance of being prosecuted. This would then lead to benefits to workers who will be subject to fewer practices that contravene these regulations. Although there are currently only a small number of prosecutions each year under the WTR, the improved targeting effect of the LRO could lead to a larger number of prosecutions. This increase in prosecutions will directly benefit those workers who are affected by the convicted organisation, however, this may also have a deterrent effect whereby more workers will benefit and organisations will not gain an unfair advantage by exploiting workers. It is not possible to provide quantification of these benefits.

Analysis of costs

The proposed LRO will place no additional costs on business as the aim is to provide a more efficient system of sharing information to decrease costs for Government and to increase administrative efficiency. As the number of convictions under the WTR is low, there may be additional costs related to prosecutions if more employers are found to be non-compliant with the WTR. In the financial year 2007/08 there was 1 conviction under the WTR however while the LRO could feasibly raise the number of successful prosecutions, the number of cases considered for prosecution would still be expected to be low in comparison to the total number of businesses who are affected by the WTR.

Competition assessment

It is expected that the policy will not impose any specific competition issues. The LRO will allow the sharing of data between existing Government enforcement organisations to provide effective enforcement of workplace rights. By increasing the effectiveness of enforcement, the occurrence of organisations gaining an unfair advantage resulting from the exploitation of workers will be deterred.

Small firms impact test

UK workplace regulations are applicable to all firm sizes and the LRO contains no amendments which will specifically impact on small firms. It is not expected that the current distribution of inspections will be altered in a significant way as to impact disproportionately on small businesses.

Equality

After initial screening as to the potential impacts of this policy on race, disability and gender equality it has been decided that there will not be a major impact upon minority groups in terms of the numbers affected or the seriousness of the likely impact, or both.

F: Risks

The LRO could feasibly raise the number of prosecutions under the WTR and other workplace rights however due to the current level of prosecutions the number of prosecutions would still be expected to be low in comparison with the coverage of the regulations.

The benefits outlined above contain assumptions due to the limited amount of data in some cases. This risk will be mitigated as data becomes available through the Pay and Work Rights helpline which will give a more in depth understanding of the levels multi-issue cases per year and their relevance to each enforcement organisation.

G: Enforcement

The LRO proposes to remove restrictions on the sharing of information between the organisations listed above therefore enforcement will not be necessary.

H: Recommendation

The Government considers that it is important to ensure that enforcement organisations are able to work efficiently and provide the best use of resources to target those who do not adhere to current employment regulations. The Government's preferred option is option 2 as we have concluded that the LRO will help provide greater protection to vulnerable workers, greater availability of information to enable more targeted inspections and reduce administrative burdens on both the government and business.

I: Implementation

The policy will be implemented on the 1st April 2010 or as soon as possible thereafter.

J: Monitoring and evaluation

The cost and benefits contained in this impact assessment will be reviewed when more data becomes available from the Pay and Work Rights helpline and from existing enforcement operations.

Specific Impact Tests: Checklist

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	No	No
Rural Proofing	No	No

Annexes

Annex A

Table A1 - 12 month estimate of calls to the Pay and Work Rights helpline by enforcement organisation

	Complaints ^{ab}	of which multi-issue complaints
EAS	1,020	66
HMRC	3,630	180
DEFRA	588	30
HSE	342	96

a - 12 month estimate of complaints based on calls received to the Pay and Work Rights helpline in June and July 2009

b - The figures exclude calls which are dealt with over the phone and only show those complaints that require further investigation

Table A2 - Inspections and enforcement notices issued by organisations responsible for the enforcement of the Working Time Regulations

	Inspections	Enforcement notices issued ^a
2001/01	80,447	16,866
2001/02	75,237	17,042
2002/03	84,234	19,104
Average	79,973	17,671

a - Enforcement notices can be issued in three categories, improvement, deferred prohibition and immediate prohibition and are issued to non-compliant organisations

