

Employment Rights – Single Enforcement Body: Consultation

As part of the Government’s Good Work Plan, it is consulting on reforming the enforcement system for certain rights. The proposals concern:

- creating a single enforcement body
- what the remit should be of that body
- the approach to enforcement; and
- powers and sanctions.

The proposals are set out in brief below, along with LGA comments. We have not set out the consultation questions, but if authorities would like to send us any comments on the proposals and/or responses to the individual questions, which authorities can find in the consultation document, we will feed them into our response. Please send your comments to eru@local.gov.uk by 13 September 2019. Should authorities wish to respond directly to the consultation, details are on the consultation website and the closing date is 6 October 2019. We should be obliged if you would also send us a copy of any such response, again to eru@local.gov.uk.

Single enforcement body

Under the existing enforcement landscape, aside from rights enforced by individuals in the courts and tribunals, various employment rights are enforced by different bodies, as set out below:

Enforcement body	Areas of enforcement
HM Revenue and Customs (HMRC)	NMW/NLW
Gangmasters and Labour Abuse Authorities (GLAA)	Labour exploitation prevention/modern slavery/gangmasters licensing scheme
Employment Agency Standards Inspectorate (EAS)	Employment agencies and employment businesses
Health and Safety Executive (HSE)	Health and safety at work (higher risk sectors)
Local authorities	Health and safety at work (lower risk sectors)
HMRC Statutory Payments Disputes Team	Statutory payments, including Statutory Sick Pay (SSP)
Equality and Human Rights Commission (EHRC)	Discriminatory practices in employment and recruitment

The consultation proposes that instead of that system there should be a single enforcement body for some of those rights (see remit section below), the potential benefits of such a system including:

- better support for workers, through it being clearer where to get help and it being easier to raise complaints and the better use of intelligence for proactive enforcement; and
- creating a more level playing field for employers and a consistent approach to enforcement.

LGA comments We anticipate that local authorities will support the creation of a single enforcement body for certain rights, provided it is properly resourced and consistent and proportionate in its approach, and we will respond to the consultation accordingly. However if you consider otherwise, then please let us know.

Remit of a single enforcement body

The Government proposes that the focus of any single enforcement body should be protecting the most vulnerable workers. For that reason, it proposes that as a minimum the body's core remit would cover:

- NMW and NLW enforcement
- Domestic regulations relating to employment agencies
- Umbrella company enforcement
- Licenses to supply labour in the high risk sectors of agriculture and the fresh food supply chain
- Labour exploitation and modern slavery prevention
- Holiday pay for vulnerable workers.

In addition though, the Government is considering adding further areas to the body's remit, and is seeking views on this proposal. Those areas are:

- SSP
- Enforcement of employment tribunal awards.

The Government is not intending to include health and safety enforcement in the body's remit, so local authorities will remain responsible for enforcement in lower risk sectors. Further, it is not intending to change EHRC's role in preventing discriminatory practices, although the Government is seeking views on whether there are gaps in the EHRC's enforcement tools, and whether a single enforcement body could address such gaps.

LGA comments We anticipate that local authorities will support the proposal that the single enforcement body's remit should include SSP and enforcement of employment tribunal awards, but that it should not include health and safety and discrimination enforcement. We would welcome local authorities' views though.

Approach to enforcement

The Government believes that the creation of a single enforcement body would be an opportunity to review methods of enforcement and to establish a consistent approach. Those methods of

enforcement would, as is largely the case now, range from supporting employers to rectify breaches, where there are accidental low or no-harm breaches, to criminal prosecutions in the case of severe labour abuses. The difference though would be more consistency in the approach, for example HMRC uses 'nudge' letters as an initial step to try and resolve minor issues, and that approach could be used consistently across a single enforcement body's remit.

The Government also believes that a single enforcement body could have a role in providing advice and guidance to workers and employers, as a method of increasing awareness and so compliance. That would complement advice from bodies such as Acas, but a key benefit could be that a new body could use intelligence gathered through its activities to provide targeted guidance.

LGA comments We anticipate that local authorities will agree with the proposals in this area of the consultation, and will respond accordingly unless told otherwise.

Powers and sanctions

The consultation sets out a number of proposals for reforming the powers and sanctions a single enforcement body would have. Many of them are not directly relevant to local authorities as they concern enforcement powers and sanctions against gangmasters and employment agencies.

However, a proposal that could be relevant concerns encouraging the top of supply chains to take responsibility more broadly for labour market breaches. In practice that would mean that where an organisation is found to have breached employment law, the companies it supplies to should be contacted and informed. The head of the supply chain would then be expected to work with the supplier to rectify any outstanding issues of non-compliance. The consultation does not say that the system could apply to public sector bodies but it does ask whether such a method of enforcement would work better in certain sectors rather than others, which could mean it might apply to public sector bodies. The consultation also seeks views on how any such system would apply, for example it asks, should there be a threshold in terms of the amount of business the head of the supply chain does with the company in breach, before the duty applies?

LGA comments We would welcome local authorities' views on the supply chain proposal. In any event in responding we will make it clear that any such system should be proportionate in terms of the duty placed on the head of the supply chain and when that duty is applied. The duty would also need to be accompanied with clear and comprehensive guidance.

Next steps

The consultation does not set out a timetable for next steps, but we will report any relevant developments in future bulletins.