

Fair Work Agency

Version 01 - 30th June 2026

Introduction

In April this year, the Government launched the Fair Work Agency (FWA), a new workplace watchdog which it claimed will “transform labour market enforcement.” The challenge the FWA faces is that Britain has, for quite some time now, faced a crisis in workplace law enforcement in which employers know that they have little chance of detection or punishment for not paying workers their due, or for placing them at risk of illness and injury. Currently the ratio of workplace inspectors to workers in Britain is the lowest in the OECD and is a fraction of the number that would be needed to comply with guidelines set by the International Labour Organisation (ILO).

The Agency

The FWA replaces three existing agencies with inspectorate and enforcement powers in respect of employment rights. These are the National Minimum Wage Unit within HM Revenue & Customs (NMWU), the Gangmasters and Labour Abuse Authority (GLAA) and the Employment Agency Standards Inspectorate (EAS). The FWA also assumes the role of the Director of Labour Market Enforcement (DLME), an office that was created in 2016 to coordinate the work of these three agencies. Under the terms of the Employment Rights Act, the FWA has a range of powers, some already existing and some new. These include:

- Powers to inspect workplaces and require employers to produce relevant documents and evidence to demonstrate compliance with employment law
- A civil penalty regime where enforcement officers can require the employers to pay workers for underpaid wages.
- A new civil proceedings power to bring proceedings in the employment tribunal on a worker's behalf.
- An enforcement regime in respect of labour market criminal offences (based on the Labour Market Enforcement regime in the Immigration Act 2016).
- Cost recovery: the Secretary of State can set out how the FWA can impose charges to recover enforcement costs from employers.

What are the defects?

Whilst the IER broadly welcomes the creation of the FWA as an essential component of any employment rights regime, it also has some concerns.

- 1. Fragmented regulatory system.** The original intention behind the creation of a new enforcement body was that it should be a single enforcement body, with a remit encompassing health and safety and equality law as well as the minimum wage, agency work and worker exploitation. The FWA falls far short of this.

- 2. No formal role for trade unions.** Experience in other countries shows that state enforcement works best when trade unions are given a formal role with real powers.
- 3. Funding landscape.** Any credible system of regulation requires three conditions to be in place: first, that inspectors actually have a credible presence within workplaces (to inspect routinely, to investigate incidents etc); second, that escalation towards greater punitiveness on the part of inspectors is possible and, where the circumstances demand it, likely; and third, that sanctions formally at the disposal of both regulators and thus the courts are credible ones. As things stand, the FWA is not sufficiently resourced to meet these conditions. The FWA is operating in a regulatory eco-system in which there are major enforcement gaps, and where other regulators have a severely reduced capacity.
- 4. Employer-friendly enforcement.** Moreover, the FWA has already been positioned – by itself and by Government – as an ‘employer-friendly’ agency. First strategic priorities for the Agency, set by the Secretary of State, make no reference whatsoever to the goals of improving compliance rates and strengthening enforcement. Top of the list, instead, is ‘reducing regulatory burdens’.
- 5. Mission creep.** Academic and policy literature suggests that the GLA/GLAA's post-2016 integration into the Home Office and expansion of coercive powers pushed it closer to immigration enforcement. This ‘mission creep’ generated a chilling effect on migrant workers’ willingness to report exploitation, thereby undermining its protective function.

What needs to be done?

- 1. Restoration of funding across the workplace regulatory system**
 - *The FWA and other workplace regulators must have their funding restored to previous, pre-2010 levels, and must be adequately funded to take up the FWA's new functions set out above.*
 - *Funding for workplace regulators must be ring-fenced and index-linked.*
- 2. A credible inspection and enforcement regime**
 - *Planned inspection regimes in which employers can expect a proactive, unannounced inspection with a reasonable interval between visits.*
 - *A credible threat of prosecution and enforcement action for all those who are found to have breached the law. This means key performance indicators which include targets for both inspections and regulatory enforcement.*

continued overleaf...



For further details, and up to date information once consultations conclude and regulations are published, see IER's new **Working Life Podcast**, or scan this QR code.

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Fair Work Agency (continued)

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What needs to be done? (continued)

3. A central role for trade unions

- *Workers and their trade union representatives should be fully involved in the setting of enforcement targets.*
- *Workers and their trade union representatives should be given a right to bring cases to the courts and tribunals on behalf of members and other workers.*

4. A central role for workers

- *Where there is no trade union recognition agreement, trade union representatives must be given access to workplaces.*
- *Elected trade union representatives should be given the power to issue 'Provisional Improvement Notices' which would automatically trigger investigation by the FWA.*
- *An immediate reform which ought to be implemented is the requirement that employers produce a 'Fair Work Compliance Statement' which workers can verify.*

5. Protection for workers

- *The FWA must guarantee workers anonymity and must not use this as a reason not to investigate.*
- *The FWA must have full administrative separation from any agency responsible for immigration and border control.*



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