

By Email

Dear Sirs

The Institute of Payroll Professionals (IPP) was established in September 2006 following a re-branding of the Institute of Payroll and Pensions Management (IPPM). Since 1985, our primary aim has been to raise the standards of professionalism across the payroll industry and, by doing this, elevate the standing and profile of the profession. The IPP currently represents the views of its 5,000 members and works with a number of Government departments, such as HMRC, DWP, BIS formerly BERR.

The Mission of the IPP is to raise the contribution of payroll and pension professionals to organisations by:

- Improving technical skills and practical experience
- Working with Government to ensure practical implementation of relevant legislation, and
- Promoting the highest standards of professional conduct

The Institute, through its Policy team headed by Karen Thomson, has been responding to consultation documents and attending consultation meetings for more than 12 years. In addition, the IPP makes regular representation to Government departments on current and/or proposed legislation and procedures that are impracticable or inequitable for employers which, in turn, could have a knock-on effect on Government departments. As a result of this sustained effort over the last decade, we have created sound working relationships with DWP, BIS, HMRC and other Government departments.

The IPP are grateful for the opportunity to comment on the consultation for Information-Sharing between bodies responsible for enforcing workplace rights. We are pleased to be able to feed into the policy and operational changes that arise from this consultation, and hope that this written response will form the basis of an ongoing relationship with BIS.

Yours faithfully

Diana Bruce  
Policy Liaison Officer

IPP, Shelly House, Farmhouse Way, Solihull, West Midlands B90 4EH  
t: 0121 712 1000 f: 0121 712 1001 e: [info@payrollprofession.org](mailto:info@payrollprofession.org)  
[www.payrollprofession.org](http://www.payrollprofession.org)



Should you require clarification of any of the points that have been made in this response, please do not hesitate to contact me or one of the members of the Policy and Research Team.

Contact details:

Policy Liaison Officer,  
[diana.bruce@payrollprofession.org](mailto:diana.bruce@payrollprofession.org)

Senior Policy and Research Officer,  
[elaine.gibson@payrollprofession.org](mailto:elaine.gibson@payrollprofession.org)

Associate Director of Policy and Research,  
[karen.thomson@payrollprofession.org](mailto:karen.thomson@payrollprofession.org)

**IPP**, Shelly House, Farmhouse Way, Solihull, West Midlands B90 4EH  
t: 0121 712 1000 f: 0121 712 1001 e: [info@payrollprofession.org](mailto:info@payrollprofession.org)  
[www.payrollprofession.org](http://www.payrollprofession.org)



## IPP Member Survey response to the consultation for Information-Sharing between bodies responsible for enforcing workplace rights

The IPP have surveyed the membership in response to the consultation on proposals to amend the:

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

in order to collect their views. We inserted excerpts from the consultation within the survey to make it easier for members to understand and respond accordingly. Please find below a summary of responses and the IPP's conclusion based on these responses. The full detail of the responses are also included, and below some of the question tables please note the individual member comments.

### Summary

A total of 48 members responded to the survey, however more than half skipped each question. As mentioned above, we did include excerpts from the consultation document to help responders but it is likely that there is a lack of overall understanding of the proposals (included in the full response below). Whether this is through insufficient time to read the full consultation or not we cannot be certain. Of those that did respond 71.4% thought that the proposals would remove or reduce burdens and only 3.6% did not. However 25% were undecided. When asked if there were other information sharing barriers which should be addressed to reduce or remove burdens, only 2 members said yes. Please see individual comments. Half of those that responded thought that there should not be any non-legislative means that would satisfactorily remedy the difficulty which the proposals intend to address. The other half were undecided. Interestingly, no members thought that there was any practical evidence to support the needs for these reforms. The responses were split between 'no evidence' and 'don't know'. When asked if the proposals were proportionate to the policy objective, no one disagreed. The majority thought that the proposals do strike a fair balance between public interest and any persons adversely affected by them. When asked if the proposals would remove any necessary protection, just over half of the respondents said no, 42% didn't know and only 1 member thought yes. The majority thought that the proposals would not prevent any person from exercising any right of freedom which they might reasonably expect to continue to exercise. When asked if they considered the provisions of the proposal to be constitutionally significant, the responses were divided between 31% yes, 42% no and 26% were unsure.

### Conclusion

Overall the IPP members that responded to the survey reacted positively to the proposals but the fact that so many members skipped questions raises a concern.

IPP, Shelly House, Farmhouse Way, Solihull, West Midlands B90 4EH  
t: 0121 712 1000 f: 0121 712 1001 e: [info@payrollprofession.org](mailto:info@payrollprofession.org)  
[www.payrollprofession.org](http://www.payrollprofession.org)



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be a couple of people who were opposed to the proposals which you can see in the comments below. The IPP would recommend that further consultation is undertaken before implementing any legislation, however do support the concept of information sharing. Further consultation ideally should be in the form of stakeholder forums, rather than another written document. This would allow discussion and debate to take place around how these proposed practices would actually work in reality. The IPP would welcome further discussion in this area on behalf of their members and would be delighted to participate in any forums.

## Full response to survey

### Information sharing between bodies responsible for enforcing workplace rights

Please tick the box below that best represents you as a respondent:		
Answer Options	Response Percent	Response Count
Micro business (up to 9 staff)	8.3%	4
Small business (10 to 49 staff)	10.4%	5
Medium business (50 to 250 staff)	14.6%	7
Large business (over 250 staff)	66.7%	32
<b><i>answered question</i></b>		<b>48</b>
<b><i>skipped question</i></b>		<b>0</b>

### Burdens

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

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 Employment Agency Standards inspectorate (EAS) or HM Revenue & Customs (HMRC), for example, obtained information that would be relevant to the Health and Safety Executive (HSE)\* it would reduce the cost of several other agencies investigating one employer if they could share information with each other.

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 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.

IPP, Shelly House, Farmhouse Way, Solihull, West Midlands B90 4EH  
t: 0121 712 1000 f: 0121 712 1001 e: info@payrollprofession.org  
[www.payrollprofession.org](http://www.payrollprofession.org)



The fact that information cannot be shared between certain government agencies (e.g. HSE with the EAS and HMRC, or the EAS with the Gangmasters Licensing Authority (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. 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 an applicant 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.

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.

\*References to HSE should be taken as reference to all the bodies responsible for Working Time Regulations enforcement.

<b>Above is an excerpt from the consultation document. Do you think these proposals will remove or reduce burdens?</b>		
<b>Answer Options</b>	<b>Response Percent</b>	<b>Response Count</b>
Yes	71.4%	20
No	3.6%	1
Don't know	25.0%	7
Comments:		3
<b>answered question</b>		<b>28</b>
<b>skipped question</b>		<b>20</b>

- Of course better communication will reduce the burdens and the time taken to compile the necessary enforcement data, however, the civil service seem to be spending so much time seeing what they could do they are not doing what they should be doing and focusing on whether they "should". We already know what has happened when the revenue merged with those responsible for NIC's and the length of time it took for the two bodies to actually start operating as one and even now members have reported that they get mixed responses to their queries depending on the core discipline of the person on the phone. There are good reasons why government departments should not be allowed to share data without safeguards and I believe this ought to remain the case. I carry out compliance checks which cover not only payroll duties but also BIK's and the VAT and corporation tax implications of what employers do and even though all of that is within the purview of revenue and customs they don't appear to be able to share data or appreciate the cross border implications themselves and that creates a dangerous situation for employers. This proposal has even more dangerous implications for employers
- Looks as though this will be of more benefit to HMRC than it will be to any employer
- It will not reduce burdens - but it will make the burden more manageable

<b>Are there any other information sharing barriers which, in your view, should be addressed to reduce or remove burdens resulting from legislation?</b>		
<b>Answer Options</b>	<b>Response Percent</b>	<b>Response Count</b>
Yes (please comment below)	7.4%	2
No	29.6%	8
Don't know	63.0%	17
Comments:		2
<b><i>answered question</i></b>		<b>27</b>
<b><i>skipped question</i></b>		<b>21</b>

- Within each department there appears to be barriers and I feel government ought to start there instead of opening up a whole pot of controversy with cross departmental sharing. Perhaps once the government has a joined up revenue & customs they might start to think about difficult stuff like cross departmental cooperation
- Standardised questionnaires to ensure that information being provided fits all otherwise different bodies will still have to submit additional information requests. This could, however, increase the burden unnecessarily on those businesses having to provide information as there may not be a requirement for everything in all cases

### **Assessment of deficiencies**

A number of gateways do already exist between the enforcement bodies. Information sharing is not permitted unless there is a legal gateway. Unauthorised disclosure without a gateway is generally a criminal offence or otherwise actionable.

To follow is a brief assessment of the practical significance of the information sharing deficiency.

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

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.

Working time inspectors have unsatisfactory information sharing gateways with officers responsible for enforcing the NMW, the AMW and EAS. 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. In addition, working time inspectors are not able to supply information about the suitability for a gangmaster licence unless

they are already acting as a gangmaster in the GLA sectors.

Employment agency standards (EAS) inspectors have unsatisfactory gateways with officers responsible for enforcing working time and the AMW. 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. In addition they are not able to supply information about the suitability for a gangmaster licence unless they are already acting as a gangmaster in the GLA sectors.

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 employments agencies are not carrying out the checks that they are required to do 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 the Office for Standards in Education, Children's Services and Skills (Ofsted) who enforce standards of care, unless the EAS is itself considering prosecuting the agency for the breach. An inability to act could have serious consequences for children and vulnerable adults.

<b>Are there any non-legislative means that would satisfactorily remedy the difficulty which the proposals intend to address?</b>		
<b>Answer Options</b>	<b>Response Percent</b>	<b>Response Count</b>
Yes (please comment below)	0.0%	0
No	45.0%	9
Don't know	55.0%	11
Comments:		3
	<b><i>answered question</i></b>	<b>20</b>
	<b><i>skipped question</i></b>	<b>28</b>

- And in my view there should not be. A NMW compliance review should be just that and should not stray into areas such as HSE and into things BIS should be doing. The fact that NMW officers have no experience or skills in other areas means they are likely to be passing on data unnecessarily and creating unrealistic burdens on employers by then instigating further reviews which are not needed and this can have only a harmful effect on the already strained relationships between employers and government. It is about time these separate agencies started doing their jobs properly and separately before they embark on a massive sharing of data. Come on, we already know that the farcical money laundering rules have resulted in such a massive amount of data being shared between employers, agents and government agencies with SOCA that there is actually less chance of money laundering being discovered now than before the regulations came into force so how on earth is this likely to help
- To avoid mis-use of sharing info, the limits should be defined by legislation
- I do agree with information sharing and think it would be a real step forward, but think it should be legislative and controlled

**Is there any practical evidence that you are aware of that supports the need for these reforms? If so, please provide details.**

IPP, Shelly House, Farmhouse Way, Solihull, West Midlands B90 4EH  
t: 0121 712 1000 f: 0121 712 1001 e: info@payrollprofession.org  
[www.payrollprofession.org](http://www.payrollprofession.org)



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Answer Options	Response Percent	Response Count
Yes (please comment below)	0.0%	0
No	55.0%	11
Don't know	45.0%	9
Comments:		1
<b>answered question</b>		<b>20</b>
<b>skipped question</b>		<b>28</b>

- The only evidence is that outlined above and none of it convinces me that reform is needed, except to the process by which the separate agencies do their work now. Compliance can only be achieved through dedication and focus. To embark on massive data sharing exercises between government departments will, in my view, only water down the efforts made now and result in a change of focus, i.e. what else can we do this employer for while we are here. Don't get me wrong, from a professional point of view I am all for the reforms and hope they will go even further because employers will need the services of specialists even more than they do now in order to counteract the bombardment of enforcement they will encounter as each department seeks to outdo the other for passing on information

## Summary of proposals & policy objectives

The proposed LRO will amend the five acts mentioned in the introduction to:

Permit officers responsible for enforcing the NMW, the AMW and employment agency 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 AMW 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.

The policy objectives are for the workplace enforcement bodies to have improved access to relevant information to allow them 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.

<b>Are these proposals proportionate to the policy objective?</b>		
<b>Answer Options</b>	<b>Response Percent</b>	<b>Response Count</b>
Yes	94.7%	18
No	0.0%	0
Don't know	5.3%	1
Comments:		2
<b>answered question</b>		<b>19</b>
<b>skipped question</b>		<b>29</b>

- Of course they are. If you see the objective as creating a massive database of possible offenses and a whole raft of potential burdens on employers then oh yes, the proposals are proportionate. If you look at the proportional comparison with what is right and proper then I say no, it is completely unwarranted
- Yes but they are still biased in the Government Agencies favour

<b>Do the proposals, taken as a whole, strike a fair balance between the public interest and any person adversely affected by it?</b>		
<b>Answer Options</b>	<b>Response Percent</b>	<b>Response Count</b>
Yes	84.2%	16
No	5.3%	1
Don't know	10.5%	2
Comments:		2
<b>answered question</b>		<b>19</b>
<b>skipped question</b>		<b>29</b>

- I think the huge amount of data they will share, lets face it every examination of an employers records will result in a report to the central pot and therefore increase the huge amount of data to be examined, will actually work against the needs of those who feel their rights have been compromised. The fear I have is that government will spend so much time trawling the database for potential offenses they will not have the resources to actually investigate a person's complaint that they may be being treated badly. In my final years in the public sector I was probably working an average of 70 hours a week but I had no intentions of making a complaint because that is what was needed to get the job done. Under no circumstances should a government department interfere with a person's choice and this looks to me like an enormous interference
- Have to see this in practice before we can tell

<b>Do the proposals remove any necessary protection?</b>		
<b>Answer Options</b>	<b>Response Percent</b>	<b>Response Count</b>
Yes	5.3%	1
No	52.6%	10
Don't know	42.1%	8
Comments:		2

IPP, Shelly House, Farmhouse Way, Solihull, West Midlands B90 4EH  
t: 0121 712 1000 f: 0121 712 1001 e: info@payrollprofession.org  
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<b><i>answered question</i></b>	<b>19</b>
<b><i>skipped question</i></b>	<b>29</b>

- Not in an official sense because they are not seeking to strengthen or diminish the rights and protections. All they are doing is increasing the interference and burdens and in overburdening the system with data they might actually achieve the opposite result to the intentions of the regulations as they are now. By overwhelming the system with data you merely miss the very people you are supposed to be helping
- As long as the data is handled appropriately

<b>Do you have views regarding the expected benefits of the proposals?</b>		
<b>Answer Options</b>	<b>Response Percent</b>	<b>Response Count</b>
Yes (please comment below)	11.1%	2
No	88.9%	16
Comments:		3
<b><i>answered question</i></b>		<b>18</b>
<b><i>skipped question</i></b>		<b>30</b>

- I honestly cannot see the government realising the expected benefits with this sledgehammer approach. All this will do is increase prosecutions for minor matters, and for some it will result in reductions in their hours and earnings. My fear is another huge increase in compliance costs for business as they seek to cope with the influx of enforcers with little if any benefit for the people they are claiming to be representing
- They all seem to be one-sided
- It should much be better that the data is in one place that everyone can share, rather than in 2, 3, 4 or more places. There would be less chance for someone who should not see the data to get their hands on it

## Freedom of rights

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. BIS believe that the information sharing gateway will assist with the enforcement of employment rights without adding any additional burdens to employers.

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 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.

## Do the proposals prevent any person from continuing to exercise any right or freedom which he might reasonably expect to continue to exercise?

IPP, Shelly House, Farmhouse Way, Solihull, West Midlands B90 4EH  
t: 0121 712 1000 f: 0121 712 1001 e: info@payrollprofession.org  
[www.payrollprofession.org](http://www.payrollprofession.org)



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Answer Options	Response Percent	Response Count
Yes (please comment below)	5.3%	1
No	68.4%	13
Don't know	26.3%	5
Comments:		1
<b>answered question</b>		<b>19</b>
<b>skipped question</b>		<b>29</b>

- Perhaps prevent is the wrong word. None of this prevents a person from lodging a complaint but it may interfere with the process by which they are supposed to obtain redress. We are in danger of allowing circumvention of the natural process and interference in the employee and employer relationships. It is my view that government knows where the problems are but often chooses, for political reasons, not to carry out enforcement. I cannot see this situation changing with the proposals, on the contrary it has the risk of interfering with it

Do you consider the provisions of the proposal to be constitutionally significant?		
Answer Options	Response Percent	Response Count
Yes	31.6%	6
No	42.1%	8
Don't know	26.3%	5
Comments:		3
<b>answered question</b>		<b>19</b>
<b>skipped question</b>		<b>29</b>

- It is very significant as it represents a huge change to the way government departments operate
- The proposals are only gathering together all the existing investigatory strands; so there should be no dramatic change to people's rights; and therefore should not be constitutionally significant
- It gives a very clear message that the various dept's are working together to reduce the number of non-compliant companies