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UK Compliance with major ILO Conventions 2019

**Trades Union Congress report on
Conventions 29, 81, 105 and 182, and
Protocol 29.**

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The Trades Union Congress was founded in 1868, and we bring together more than 5.6 million working people who make up our 48 member unions.

Article 22 reports

The TUC welcomes this opportunity to address the Committee of Experts about the UK's compliance with ILO Standards. We have commented on the government's own reports where available, but given the late completion of these, we are now also taking the precaution of expressing our concerns and observations directly to the ILO.

This year we have consulted with our affiliated unions, and with partner organisations, to produce a commentary on the UK's performance with regard to Convention & Protocol 29 of Forced Labour, Convention 182 on the Worst Forms of Child Labour, and on Convention 81 on labour Inspection.

We welcome the contribution of our affiliates in the writing of this submission, and of our partners in UK civil society, in particular Focus on Labour Exploitation (FLEX), Anti-Slavery International and Child Rights international (CRIN).

Forced Labour

Conventions & Protocols: Forced Labour Convention 1930 (C29), Protocol to the Forced Labour Convention (2014) P29, Abolition of Forced Labour 1957 (C105).

The UK government has made tackling modern slavery a flagship policy. With the Modern Slavery Act passed in the final days of the 2010-2015 Coalition Government, the following Conservative governments continued to highlight its commitment to tackling modern slavery. However, from the beginning their approach had fundamental flaws which have continued to hamper genuine efforts to crack down on modern slavery and protect its victims.

In their 2016 comments to the Experts, the Government flagged up two major pieces of legislation: the Modern Slavery Act itself, which established two offences of slavery, servitude and forced or compulsory labour, and human trafficking / and the 2016 Immigration Act which "introduced new powers and tools to enable the state labour market enforcement bodies to effectively tackle illegal working and labour market exploitation." (our emphasis).

The TUC, its affiliated unions and many of our partners, are convinced that the ongoing conflation of tackling forced labour and "tackling illegal working" has polluted policy and practice and led to a consistent conflict of interest between stated commitments to end trafficking and protect victims, and one of the Government's other major concerns: reducing immigration at all costs.

Recent figures showing that 70% of people referred to the UK's National Referral Mechanism were not British, showing that the national extraction and legal status of the victims is clearly an important aspect of vulnerability to modern slavery.

The TUC and its affiliated unions also remain concerned about the compatibility of the UK Government's approach to forced labour as a court mandated punishment with Convention 29

following the privatisation of unpaid work schemes in 2012. We are convinced that both the policy and its implementation fail to satisfy the requirements of the Convention, failing to provide the safeguards necessary.

Modern Slavery

The National Referral Mechanism

Obstacles persist in ensuring the effective identification and protection of victims of trafficking, forced labour and modern slavery, and their access to justice and remedy.

The UK's National Referral Mechanism (NRM), "a multi-agency victim identification and support process" brings together many different governmental agencies and NGOs, and ought to facilitate access to support and remedy, remains insufficiently effective. Information on whether it is fulfilling its more fundamental role – helping those referred to it stay free of involvement in all forms of modern slavery – is elusive.

We do know that despite an annual increase in referrals, prosecutions remain low and there has been a smaller increase in the granting of what the NRM terms "Conclusive Grounds" status for identified victims. Without Conclusive Grounds, possible victims are denied many of the support mechanisms necessary to prevent them returning to vulnerable status. In 2014, the percentage of referrals resulting in Conclusive Grounds was 44%. By 2017 this had dropped to 32%. As of March 2019, the figures¹ for 2018 were only 16%, though this may be skewed by a very large number of pending cases.

The different agencies of the NRM are designated² "first responder" organisations, "authorised to refer a potential victim of modern slavery" to the NRM. Anti-Slavery International (in a joint statement with The Anti trafficking Monitoring group, Human trafficking Foundation and the 'first responder' domestic workers' organisation Kalayaan) has raised concerns that these first responders receive insufficient training on identification and support victims, and on assisting with the bureaucratic processes of the NRM, noting that "a badly written form can result in the likely rejection of a [otherwise] positive decision³" and that many first responders don't even know they are supposed to help with this.

Nor is there an effective process of appeals for those receiving negative assessments. Before Conclusive Grounds can be established, an initial assessment determines whether there are "reasonable grounds." If this is denied, there are no mechanism whatsoever to challenge the decision, and the individual leaves the NRM. If they pass this stage and are not awarded Conclusive Grounds status, there is the possibility of appealing to a Multi-Agency Assurance Panels (MAAP), but they can only deliver advisory verdicts, with the final decision reserved by

¹ <https://nationalcrimeagency.gov.uk/who-we-are/publications/282-national-referral-mechanism-statistics-end-of-year-summary-2018/file>

² <https://www.gov.uk/government/publications/human-trafficking-victims-referral-and-assessment-forms/guidance-on-the-national-referral-mechanism-for-potential-adult-victims-of-modern-slavery-england-and-wales>

³ Annex 1

the Home Office, who made the initial decision that the MAAP is recommending be overturned.

Nor is there any recognised legal right of appeal. At the initial stage, individuals would have no access to legal aid, so even if there was an avenue it would be almost impossible for them to use it. If appealing over Conclusive Grounds, there is access to legal aid, but so far there have been no successful attempts to use the law to reopen cases. First Responders can make a request for reconsideration, but again many are unaware of this. If this is rejected, it is then possible for a judicial review to undo the Home Office's decision, but all this does is leave the decision still to be made, with no greater protection for the victim than previously.

In short, the process is unaccountable, convoluted, and ultimately ineffectual in keeping positive Conclusive Grounds cases up to pace with the numbers of victims identified and referred to the NRM.

Other flaws in the set up mean that, according to Anti-Slavery International, "a number of victims do not consent to referral into the NRM, due to fears about the involvement of immigration services, being unable to work in the NRM, uncertainties around support provided, likelihood of dispersal away from any legal representatives, the lack of impact of a positive decision and the detrimental impact of any negative decision⁴." With the average wait for a decision currently at 150 days, the limited support available to those in administrative limbo "leaves victims facing homelessness, destitution, and vulnerability to further exploitation⁵."

The Government has at least made the welcome admission⁶ that support should be based on need, rather than provided for a limited, 'one size fits all' period of time. In accepting that the current 45-day support limit should be replaced by a case by case approach, there is a chance for the system to amend some of the weaknesses. We await the government's amended policy with interest.

Government policy was further challenged last November when a policy to reduce those support payments from £65 per week to £37.75 (roughly equivalent to 13% of the current, full-time national living wage rate) was ruled unlawful by the High Court. While the government has identified 1,208 victims of underpayment, organisations like Focus On Labour Exploitation (FLEX), believe "it is unlikely that all victims owed money will receive it." Furthermore, there are fears that the government may return to this deeply harmful policy after a senior civil servant said: "The judge said the way the alignment was done was unlawful, not that the alignment itself was unlawful."⁷ Temporary support at poverty levels is not an effective measure of providing rehabilitation for victims of slavery.

⁴ Ibid

⁵ Ibid

⁶ <https://www.antislavery.org/win-uk-slavery-survivors/>

⁷ <https://www.independent.co.uk/news/uk/home-news/modern-slavery-victims-home-office-trafficking-support-deprived-unlawful-high-court-a8759956.html>

The TUC is concerned that those who are waiting for an NRM decision do not have the right to work. Given the very minimal level of support payments, as noted above, applicants may be compelled to take work in order to survive. We are concerned that these workers will then have almost no recourse to protection if they are exploited. As the Immigration Act (2016) made undocumented working a criminal offence, NRM applicants who report abuse to the authorities risk imprisonment and deportation as they will have identified themselves as undocumented workers.

For those that complete the process, the prognosis may be no better. The Human Trafficking Foundation were told by police that some individuals had been referred to the NRM on multiple occasions, suggesting that the NRM was failing to prevent a return to the levels of vulnerability that led them into modern slavery in the first place. To date, the Government has provided no official figures on any tracking of those referred into the NRM after they leave it, something that must be rectified.

Access to Compensation

Compensation is an important aspect of holding perpetrators to account and helping victims of forced labour to rebuild their lives and support their families. But there is no specific civil liability for trafficking and modern slavery, meaning that claims for reparations need to be wrapped up in other causes of harm for civil lawyers to be able to pursue damages. Other legal avenues, including employment tribunals and the High Court, involve complex and lengthy processes, taking up to 18 months to reach a full trial. While the Modern Slavery Act introduced Reparation Orders to ensure that money from those convicted of slavery went directly to victims, it appears that up till November 2017, two years since the legislation was passed, there had been no such orders made⁸ despite 349 completed prosecutions in the previous year.

Another piece of legislation contemporary to the MSA is making matters worse. Brought in during the passage of the MSA though parliament, but with no oversight, the Deduction from Wages (Limitation) Regulations of 2014 severely restricts the potential for recovering money from traffickers. For no justifiable reason, the Regulations limit victims of trafficking from claiming more than two years' worth of the National Minimum Wage (NMW), regardless of how long their period of forced labour actually was.

Prior to the 2014 legislation, victims of trafficking and forced labour could reclaim unpaid wages for the entire duration of their servitude. Further problems have been caused by the "Family Worker Exemption" in the 2015 NMW Regulations, which allows live-in domestic workers to be exempt from the NMW entirely "if the worker is treated as a member of the family," creating a defence for traffickers when faced with tribunal or court claims.

⁸ <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2017-11-15/113365/>

Migrant Workers and Modern Slavery

As the preamble to the Protocol acknowledges, migrant workers have a higher risk of becoming victims of forced labour, but we have serious concerns over the way in which conflicting government priorities are undermining progress towards effectively reducing modern slavery.

The creation of a new offence of “illegal working” in the 2016 Immigration Act means that undocumented workers face a prison sentence and deportation if they report abuse to the authorities. A review by the Independent Chief Inspector of Borders and Immigration⁹ in late 2018 found that the policy was “enabling exploitation and discrimination by some employers.” The same report says that Immigration Compliance and Enforcement (ICE) teams were “ill-equipped in terms of expertise, time and incentive to identify where an individual encountered working illegally was in fact a victim of modern slavery or some other form of exploitation.”

We are concerned that joint raids by immigration and modern slavery inspectors create the sense that modern slavery legislation is at least partially, if not primarily, a means to end trafficking in order to reduce immigration rather than to prevent gross labour exploitation.

Although the Crown Prosecution Services advises that in cases involving “genuine victims” of trafficking or slavery no charges should be brought, Anti-Slavery reports that victims are still being prosecuted for drug offences, benefit fraud and – crucially – immigration offences. The 2015 Modern Slavery Act does offer a defence against the charges, but only once prosecution has begun; it neither protects the victim from prosecution nor represents immunity in court.

As a report by FLEX¹⁰ shows, there are numerous examples of detained victims of human trafficking, including victims who have been detained after receiving positive reasonable grounds decisions under the NRM.

Another important but underused power is that to give victims of forced labour temporary or permanent residence, ending their vulnerability to exploitation via fear of deportation. As Recommendation 203 makes clear, “provision of temporary or permanent residence permits and access to the labour market” is one of “the most effective protective measures for migrants subjected to forced or compulsory labour.” Yet in 2015, even before the Immigration Act created additional problems for migrant workers, only 12% of victims identified received a residence permit, typically a temporary one, while victims passing through the NRM were unable to work while their case was being considered.

The TUC believes that is the government must repeal the offence of ‘illegal working’ in the Immigration Act 2016 and ensure all workers can claim employment rights, regardless of their immigration status to successfully meet its obligations under Protocol 29.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/800641/An_inspection_of_the_Home_Office_s_approach_to_Illegal_Working_Published_May_2018.PDF

¹⁰ <https://labourexploitation.org/publications/detaining-victims-human-trafficking-and-uk-immigration-system>

Overseas Domestic Workers

In some cases, government policy is overtly creating vulnerability for migrant workers. The Overseas Domestic Workers visa (ODW), introduced in 2012, restricts such workers to a non-renewable six-month visa. Initially designed with no right for the worker to change jobs – creating a de facto kafala situation - the government altered to regulations to allow role changes, but without a concomitant increase in the visa length, meaning in many cases the short term nature of the workers' availability counting against their chances of further employment.

A 2016 independent review of the ODW recommended that, should workers wish to change jobs, this should be accompanied by a six-month extension to the visa, and to carry out information sessions to ensure as many domestic workers as possible were aware of their rights and protections. The first recommendation has been ignored, and while the government originally committed to providing compulsory information sessions, it has recently stated that it no longer intends to do so.

The NGO Kalayaan, a “first responder organisation”, states that they have supported 280 migrant domestic workers, who have provided deeply worrying information on the conditions being exacerbated by the governments failure to ease the ODW.

- 75% of the workers reported working over 15 hours per day
- Only 12% were given a day off each week
- 93% were not allowed out of the house unaccompanied
- 25% reported physical abuse, and 69% psychological abuse
- 53% did not receive regular food

Domestic workers conclusively identified as victims of trafficking may apply for a two-year extension to their visa. The issuing of such a visa comes with no support or further protection, and the worker is limited to the same work and conditions in which they had original been trafficked – domestic service in a private house. Even to qualify for the visa, workers must demonstrate that they will be financially self-sufficient without recourse to public funds, but cannot work until the visa is issued, a Catch 22 that hugely increases the likelihood of further exploitation.

The TUC has joined calls for the ODW legislation to be abolished, for the pre-2012 visa for Overseas Domestic Workers to be restored, which – while not perfect – allowed workers greater freedom in escaping abusive employers without fear of deportation or destitution.

The inspection framework for overseas domestic workers is weak. The complex UK labour inspectorate arrangements are already under huge financial pressure (see C81), with numbers of inspectors in significant decline. Compounding this is legal uncertainty over the right of inspectors to enter and inspect private homes, even in the case of suspected abuse. This leaves private homes, clearly the main venue for the work of domestic workers, as a worrying blank spot in the inspection framework.

Current government plans to strengthen the inspection regime focus on creating greater cooperation between types of inspection, and do not include any safeguards to stop work to prevent labour abuse being subverted by anti-immigration priorities. It is important that

funding and political support is given to existing inspection structures, such as the GLAA, without adding additional immigration-based responsibilities or enforcing cooperation with immigration officers.

The UK has still not ratified Convention 189, and the TUC and its partners urge them once again to do so, and to bring in other safeguards to protect this vulnerable group of workers.

Transparency in Supply Chains

The Government introduced provisions in the Modern Slavery Act 2015, requiring certain businesses (private enterprise with a legal presence in the UK and a global turnover in excess of £36m) to produce a statement setting out the steps they have taken to ensure there is no modern slavery in their own business and their supply chains. During the consultation period, prior to the implementation of the 2015 Act, the TUC expressed concerns that the legislation was weak and would not result in any meaningful changes to the way businesses tackle modern slavery in their supply chains.

Evaluation¹¹ of the Modern Slavery statements shows that only 14% of the 2,100 statements published comply with guidelines for reporting set out in the legislation and that most of them provide little information on the six areas that the Act suggest companies report on¹².

Further analysis has recently been carried out by TISCreport.org, an organisation that provides a register where companies can publish their modern slavery statements. They've found that half of organisations which fall within the scope of the TISC provisions are 12 months overdue in their reporting¹³.

One of the main problems with the TISC provision of the Modern Slavery Act is that it doesn't compel an organisation to publish a meaningful statement. There is no requirement for an organisation to outline the steps they have taken to assess risks of modern slavery in their supply chains. Under the legislation an employer can comply with the legislation by publishing a statement stating that they have taken no steps to tackle Modern Slavery¹⁴.

In short, the Modern Slavery Act, while a welcome first step from the UK Government, is producing neither the quantity nor quality of statements of human rights due diligence from British-based companies. Furthermore, we know of no analysis conducted by or for the Government to assess the impact of "awareness raising" amongst business – which the MSA undoubtedly achieves – on the prevalence of modern slavery in UK business value chains.

If the Government intends to rely on the Modern Slavery Act as its foremost means of complying with Protocol 29, it must show that the legislation can and does have a demonstrable role in protecting workers from exploitation.

¹¹ (CORE Coalition, June 2017, MODERN SLAVERY REPORTING: WEAK AND NOTABLE PRACTICE), http://corporate-responsibility.org/wp-content/uploads/2017/06/Core_ExamplesFINAL.pdf

¹² S54 (5), MSA 2016, <http://www.legislation.gov.uk/ukpga/2015/30/section/54/enacted>

¹³ <https://pressreleases.responsesource.com/news/95317/uk-modern-slavery-act-non-compliance-half-of-uk-organisations-are/>

¹⁴ <http://www.legislation.gov.uk/ukpga/2015/30/section/54/enacted>, S54 (4) (b)

Public Procurement

The TUC welcomes the government's confirmation that it will extend due diligence reporting requirements under the Modern Slavery Act to the public sector. However, to date it has not pledged to take any further action to support due diligence in the public sector by compelling public bodies to discriminate against suppliers that have not complied with the new regulations. The Government should be using the huge leverage of public sector buying to raise the level of due diligence on human rights across the board by ensuring that negligent companies cannot access procurement contracts.

Brexit

With the government threatening that the UK could leave the European Union with "no deal" by November, the government is also proposing three temporary migration programmes to counter the inevitable labour shortages caused by ending freedom of movement for EU citizens. The TUC believes these programmes will fuel exploitation and discrimination.

One of these programmes is already being piloted: the Seasonal Workers Pilot is for non-EEA workers to come to the UK for 6 months to work in horticulture. While in the UK, they will have no recourse to public funds, no pathways to permanent residency and do not have guaranteed numbers of hours and therefore earnings. They are also likely to be reliant on their employer-farm for their accommodation and other basic needs and may be isolated from towns or cities due to the nature of the work.

The government has also proposed introducing time limited visas for EU workers taking up lower skilled jobs. These visas will only apply for a 12- month period. It has been well documented that when countries introduce such limited visa schemes like this are introduced, bad employers are able to use EU workers' fear of losing their legal status in the country to force them to stay in a job with abusive conditions and low pay. This undermines conditions for all workers, particularly those who are already working in sectors such as hospitality and care, where precarious conditions are common. Trade unions in Canada and Australia have documented how their temporary visa schemes that restricted migrant workers' ability to change employer also led to abuse and undercutting.

The TUC is calling for free movement rights for EU citizens to continue and the plans for temporary visas for EU citizens to be scrapped. Rather than policies which scapegoat migrants and fuel discrimination, we need a new approach built on strong rights at work so that everyone is treated decently and paid fairly. There must be support for trade unions to collectively bargain with employers so workers can claim their rights and stop undercutting.

Root Causes

Rather than mitigating the root causes of modern slavery, government policy exacerbates the vulnerability of potential victims. We know that insecure immigration status or homelessness are evidenced to increase the likelihood of people to fall into exploitation, but Government policies such as the 'hostile environment', as we have explained, makes it much harder for those with insecure immigration status to report abuse and realise their fundamental labour rights.

Similarly, cuts to budgets across all levels of government have led to inevitable reductions in services and benefits. Local authorities have been particularly badly hit, and their ability to provide support, alongside big reductions in benefits, has led to homelessness rising year on year¹⁵.

Finally, the Government continues to sideline trade unions as effective weapons in the fight against modern slavery. Trade unions are essential to bring workers together with employers to bargain with employers to secure better rights for all workers, however the government has sought to restrict trade unions' operations and influence in the Trade Union Act (2016).

And the Government, despite advocating a strategy of using staff in public services and other areas to identify potential victims of modern slavery, has failed to engage unions in this process despite our extensive reach in key workplaces.

Overall, the Government's approach to combatting modern slavery remains grounded in a criminal justice approach. The modern slavery strategy of 2014 – by now out of date and requiring an urgent refresh – is based on an approach called “the 4 Ps” (otherwise known as CONTEST) deployed for counter-terrorism, structured around Prevent, Pursue, Protect and Prepare. But while addressing the complexities of terrorism, “Prevent” involves “safeguard and support vulnerable people to stop them from becoming terrorists or supporting terrorism,” the modern slavery strategy has no such forward-thinking approach to ending the vulnerability of potential victims, aiming instead to prevent the crime of modern slavery. Instead, this aspect of work falls on the “Protect” phase, which involves “strengthening safeguards against modern slavery by protecting vulnerable people from exploitation and increasing awareness and resilience against this crime,” but as described above, we have little evidence of Government adapting policies to prevent vulnerability and “increase resilience” before crimes take place, and plenty of information that Government is either failing to identify victims of modern slavery, or failing to protect them once identified.

Recommendations

We urge the Government to take the following action:

- Review the 2014 Modern Slavery strategy as soon as possible
- Accept all the recommendations of the Independent Modern Slavery Review
- Repeal the provisions in the Immigration Act (2016) that criminalise undocumented working and classify the wages of undocumented workers as the proceeds of crime
- Fully separate immigration status and employment rights, in line with ILO recommendations
- Improve inspection and enforcement in sectors liable to exploitative conditions

¹⁵ <https://www.theguardian.com/society/2018/nov/22/at-least-320000-homeless-people-in-britain-says-shelter>

- Provide better training for first responder organisations to fully understand their role in the process
- Free legal advice for potential victims before entering the NRM
- Provide a formal avenue for reviewing both Reasonable and Conclusive Grounds decisions, with clear guidance, set timescales and a final decision maker independent of the Home Office.
- An automatic (minimum) one year residence permit for all positive Conclusive Grounds victims, with full permission to access the labour market and dedicated case work support
- Ensure revisions to NRM support structures are made according to need rather than arbitrary timeframes, and provide adequate financial support, free accommodation, medical services and free legal advice regardless of immigration status. This may involve reversing cuts to local authority budgets.
- Improve training for law enforcement and judicial agencies to ensure victims are not prosecuted for crimes related to their trafficking.
- Ensure that any post-Brexit migration schemes are developed in consultation with workers' and employers' organisations and other parts of civil society, to test them against a criteria of whether or not they increase the likelihood of modern slavery.
- Scrap the 2012 ODW visa and return to the previous arrangement where Overseas Domestic Workers have the right to change employer and extend the visa on that basis
- Change the rules so that any worker in the UK on a so-called "tier 5¹⁶" visa, working for diplomats has to be officially employed by the Embassy, and not the diplomat.
- Repeal the trade union act, which undermines union capacity to assist in protecting workers against all forms of forced labour.

Please see Annex 1

¹⁶ <https://www.gov.uk/tier-5-government-authorised-exchange>

Forced Labour & Convention 29

In 2013, British unions submitted evidence to the ILO that the UK Government was breaching Convention 29 through the privatisation of unpaid work. *Unpaid work* is an order of a court whereby a person convicted of a criminal offence is required to perform unpaid work for a specified period of time. The unions, UNISON, NAPO and the GMB, argued that from 2012 Government changes to the unpaid work scheme meant that such work was no longer “carried out under the supervision and control of a public authority” and that unpaid labour was being “placed at the disposal of private individuals or companies.”

Noting that unpaid work in the UK does not currently require the consent of the person subject to the unpaid work order, the unions argued that the lack of proper government oversight of the privatised unpaid work contracts and the placing of unpaid work at the disposal of private companies, put the UK in direct breach of the Convention. The unions have compiled further information¹⁷ showing that the situation is even more concerning than originally thought. As a result of UK Parliamentary scrutiny of probation privatisation and our own further research we have discovered that:

Companies are regularly underperforming against the contract requirements for unpaid work laid down by the Ministry of Justice, with no sanction, showing an absence of effective supervision and control by the public authority.

Unpaid work is being supplied to the private, profit-making sector, including privatised care homes and private landowners

Private companies managing unpaid work prioritise fee paying unpaid work projects for beneficiaries which can pay, over projects for beneficiaries with no ability to pay

Unpaid work is being used for skilled and semi-skilled work that would otherwise go to paid workers

Not only has the Government failed to make any alterations in line with the Experts’ recommendations, but their failure to comply with Convention 29 will be perpetuated if the Government proceeds to re-let its unpaid work contracts to new private sector providers in 2021 as announced in May this year.

[Annex 2 contains the full evidence gathered by our affiliates on this issue.](#)

¹⁷ Annex 2, attached

Labour Inspection in Industry

Convention 81

Trade unions value highly the work and expertise of the enforcement agencies, including local authorities, Fire and Rescue Service, HSE, and the inspectorates responsible for offshore oil and gas platforms, offshore wind farms, shipping and aviation. Inspections, particularly proactive inspections, are essential for the protection of workers, with the HSE's inspections exposing a 50% material breach rate.

But almost ten years of reduced funding has left inspection agencies, including the Health & Safety Executive (HSE), with too few resources to carry out the necessary inspections, or to retain or train sufficient numbers of inspectors to do so. The number of inspectors is expected to decline further.

Convention 81 deals with labour inspection in its totality. For the UK, this makes reporting a particularly difficult process, as the UK does not inspect the main ILO labour protections through a single "labour inspectorate."

In approaching an examination of compliance with C081 it is then useful to clearly define the labour protections that the ILO would expect to be covered by a labour inspectorate and then to specify where the UK has decided to allocate those responsibilities.

Labour protections, as defined within the report from ILC 2015 – 'Labour protection in a transforming world of work' are wage policies, working time, occupational safety and health and maternity protection.

There is no single oversight of some of these. For example, maternity protection will fall under different authorities depending on the nature of the industry.

The inspection landscape is therefore complex. Although HSE retains lead responsibility, in many places other organisations apply the law in different industrial contexts. The Office for Nuclear Regulation (ONR) licenses nuclear sites. The Office of Rail and Road (ORR) is responsible for on-site inspection of the rail industry. Offices, retail and parts of the entertainment industry are the responsibility of over 400 autonomous local authorities; they have been the focus of some of the most debilitating cuts of the austerity programme of the last two governments.

This problem is exacerbated by the Government's refusal to ratify Part II of the Convention, which creates confusion over the responsibility of the government to apply common standards and protections across British workplaces. The local authority inspection regime is in tatters due to funding cuts, but the majority of its responsibilities would fall under Part II, so we have made only limited references to these problems, except where they demonstrably undermine the whole structure of labour inspection. However, with the HSE itself publicly urging local

governments to maintain their commitment to inspection¹⁸, it remains of deep concern to unions.

We have, therefore, focused on particular weaknesses of the inspection regime and the effect on fundamental workplace protections. We note with gratitude, however, the hard work of the Health & Safety Executive and its inspectors, as well as staff in other agencies providing valuable support in workplaces through the United Kingdom. All criticisms are intended to be taken as policy related.

Many of the problems highlighted have their roots in the consistent under-funding of inspection, and the impact that has not only on current capacity for inspection, but the effect on recruitment, retention, independence and expertise of the inspectorate.

Inspector Numbers

The following figures should be read in the context of the HSE's policy to recruit to its maximum capacity over the same period. HSE's capacity to recruit is limited by the capacity to train new recruits, which is limited to between 30 and 40 new trainees per year.

New recruits are counted as trainees for their first two years. Following successful 'through grading' to the substantive inspector grade it is then accepted that it takes up to a further five years to become fully competent. Most training is provided by main grade inspectors: any increase in recruitment results in a corresponding reduction in capacity to carry out regulatory functions.

Teams of inspectors, including trainees, are line managed by Principal Inspectors. Inspectors at this grade provide oversight in investigation outcomes. In all but the most significant of cases they also provide the independent oversight and authorisation needed prior to commencing legal proceedings.

The specific discipline listed by HSE for 'general' occupational safety and health inspectors is 'regulatory inspector'. Other technical expert disciplines are also recognised by HSE, and many of these also hold warrants under The Health and Safety at Work etc. Act 1974 and can be counted by HSE as 'inspectors'. These technical expert inspectors most often work alongside the regulatory inspector, providing technical assistance. Their work is often coordinated by the regulatory inspector.

¹⁸ <https://www.cieh.org/health-and-safety/2019/july/hse-urges-councils-commitment-to-inspection-duties-amid-funding-cuts/>

Table 1.

Total staff in post with discipline 'Regulatory Inspector' at trainee, main and principal grades.

Year	Total Regulatory Inspector (Trainee, Main & Principal)	Main grade
2013	773	581
2014	728	560
2015	711	507
2016	691	488
2017	651	455
2018	636	436
2019	634	426

A further complication is that when asked the HSE will compare the number of newly recruited trainee inspectors in relation to the number of main grade inspectors leaving HSE. This comparison fails to take into account that main grade inspector numbers are also diminished when inspectors are appointed to managerial positions.

The British union Prospect, which represents inspectors, and which supplied the figures, is concerned that for several years the number of recruits has consistently been insufficient to even maintain HSE's inspector numbers, let alone reverse the decline.

Inspector Remuneration

HSE's own exit interview data shows that, for over 70% of inspectors leaving, pay was either the main, or a major contributory, factor in their decision.

Current maximum pay for a main grade inspector is £44.7K and average (mean) pay for external comparators is around £55K. Furthermore, the lack of any progression mechanism for newly qualified inspectors to even reach the £44.7K leaves inspectors with little chance of future increases in pay.

Prospect reports the recent experience of one of their members, a main grade Inspector. The Inspector, visiting a site, was informed that scaffolders employed in London were paid £45K. The same member was later in the same conversation obliquely offered a job as a H&S director with that company (which they politely declined).

Some inspectors do leave HSE to take up positions with employers with whom they have had a previous regulatory relationship. Historically this pattern has been supported by HSE on the basis that the UK occupational OSH system is improved by the spreading of ex-inspectors into regulated industry.

Underfunding of the whole inspection landscape, including Fire & Rescue

In a complex inspection system, the Government's exemption of Part II of Convention 81 is unhelpful. Many responsibilities are overlapping, and a perfect divide between "industry" and "commerce" is difficult to establish.

The exempted commercial sector is inspected by local authorities, which have faced substantial budget cuts over the last few years. They cover wholesale distribution and warehousing, hotel and catering premises, offices, and the consumer/leisure industries. They are also responsible for enforcing fire regulations inside domestic premises.

Central government grant funding to local authorities has typically fallen by 40% since 2010. The Local Government Association predicts that 'Councils will have lost almost 60 percent of their grant funding (from central government) between 2010 and 2020 and will face a funding gap of £3.2bn in 2019-20¹⁹.

As mentioned, the HSE has told local authorities that they must protect the public after raising an alarm at the falling number of council health and safety inspections. But the HSE acknowledged that the significant reduction in funding that local authorities receive from central government has made it difficult for councils to meet their responsibilities to conduct inspections.

A Fire Brigades' Union (FBU) analysis reveals that central government funding for the fire and rescue service will fall by £155 million in 2019/2020, representing a 15% cut from 2016/17 to 2019/20, and that between 2010 and 2015 the funding was cut by 30 per cent²⁰. This has had an inevitable effect on enforcement. While there were almost 85,000 inspections in 2010-11, numbers fell to fewer than 50,000 in 2017-18, a reduction of more than 40%²¹. In 2017 the FBU obtained data via Freedom of Information requests from fire and rescue authorities across the UK. Between 2010 and 2017 the number of fire safety inspectors fell by 28%. There had been a 40% fall in the number of inspectors over the previous twenty years, (1997-2017²²).

Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) inspections 2018-19 found that most Fire and Rescue Services that were surveyed didn't have enough qualified inspectors to meet the requirements set in their risk-based inspection programmes and most protection teams interviewed described themselves as "under-resourced". HMICFRS also found a significant reduction in the number of competent staff members dedicated to fire safety protection. Of the 30 services that provided HMICFRS with data, the number of Fire

¹⁹ <https://www.ft.com/content/f89022a2-2fab-11e9-8744-e7016697f225>

²⁰ <https://www.fbu.org.uk/news/2019/02/20/government-%E2%80%9Csneaks-through%E2%80%9D-15-cut-fire-service>

²¹ Source: Fire Statistics Table 1202: Fire Safety Audits carried out by Fire and Rescue Services, by fire and rescue authority.

²² Source: FBU, Cuts to fire safety inspectors put the public at risk, Fire and Rescue Service Matters parliamentary bulletin, October 2017

Safety Inspectors had fallen from 820 in 2011 to 535 in 2018²³. This data is entirely consistent with the findings of the National Audit Office²⁴.

Employment Tribunals

Lack of effective inspection means that workers and unions must try to address breaches themselves. Official figures show that, partially as a result of this, the backlog in employment tribunal cases is rising much faster than new cases. The outstanding caseload was up 39 per cent in the first quarter of this year compared to the year before. And the mean age of cases at disposal was 33 weeks, six weeks more than in January to March 2018.

Meanwhile, a recent survey by the Employment Law Association found long delays in claims being processed, lengthy delays in listings, the regular cancellations of preliminary and full hearings, telephones going unanswered for hours and overworked administrative staff.

Effective inspection means that in more cases breaches are dealt with across whole workplaces, often before an employment tribunal case becomes necessary.

Tripartism

The government continues to erode the tripartite structures that previously supported effective inspection regimes. For example, Unite the Union report²⁵ on the impact of the government's dismantling of these structures. They note in an April 2019 article that workers in the tyre and rubber industry remain at risk of cancer from rubber dust and chemicals. Where once the industry had RUBIAC, the tripartite Rubber Industry Advisory Committee, and then TRISAG, the Tyre and Rubber Industries Safety Action Group (again with worker representation), now there is nothing at all.

The remaining tripartite advisory committees are vital parts of the health and safety landscape and must be protected.

In our 2017 comments on C144, we criticised the Government for failing to fill the outstanding employee vacancy on the HSE Board, despite the TUC nominating high quality candidates. We are pleased to note that the vacancy has now been filled to our satisfaction.

However, we believe there should be more engagement with trade union safety representatives. The HSE's recent 'Helping Great Britain Work Well' campaign placed great emphasis on working in partnership with other HSE stakeholders, but unions are mentioned only once in the document. Despite the restored trade union representation at board level,

²³ Source: HMICFRS, Fire and Rescue Service inspections 2018/19: Summary Tranche 1, 2018; Summary Tranche 2, 2019

²⁴ <https://www.nao.org.uk/wp-content/uploads/2015/11/Impact-of-funding-reductions-on-fire-and-rescue-services-A.pdf>

²⁵ <https://unitetheunion.org/news-events/news/2019/april/tyre-and-rubber-industry-hamstrung-on-new-research-into-health-threats-due-to-government-cuts-warns-unite/>

there is not enough active engagement or consultation with trade unions or safety representatives on day to day activities.

CONVENTION 81

Article 2

For several years, the HSE followed guidance²⁶ set out by former Minister of State for Employment, Chris Grayling, which excluded certain industries from proactive inspection on the basis of – in our view – an overly generalised, national assessment of risk. Many of our affiliated unions have raised ongoing concerns over this, though we are told that the HSE is now moving away from rigid targeting of industry areas and to include previously neglected issues such as health, including mental health. We very much welcome this development and encourage the Government to support the HSE's new strategy.

As we note earlier in this report (p8), domestic service remains an inspection problem, as the responsibility for covering it is uncertain and there are several loopholes from providing basic labour rights for families that claim that they are treating their domestic staff “as a member of the family”. Disappointingly, Section 51 of the Health and Safety at Work etc. Act 1974 states explicitly that ‘nothing in this Part shall apply in relation to a person by reason only the he employs another or is himself employed as a domestic servant in a private household.’

Nevertheless, we urge the Government to clarify the status of domestic work in British labour inspection structures to ensure that domestic workers can enjoy proper workplace protection. Ratifying C189 would be a welcome start to remedying these issues.

Article 3 - 1b

Prospect report that the cost recovery regime²⁷ for general industry where the HSE recovers costs when a material breach is identified by an Inspector has inhibited some business from approaching the HSE for advice and technical information, for fear of being found in material breach.

Government does provide advice and support for employers via websites, but without direct engagement with the HSE by companies it is unlikely that the necessary information is being communicated as widely as necessary.

Article 5

Effective cooperation in such a complex inspection environment holds huge challenges. However, the TUC does not believe the answer is merging all inspection functions, in part

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/66745/good-health-and-safety.pdf

²⁷ <https://legislationupdateservice.co.uk/news/hse-begins-cost-recovery/>

because the government has shown it incapable of separating out the role of inspectors to protect workers with a role to police them (p17).

But we also fear that attempting to create a universal inspection body would dilute expertise, spread resources too thinly (though this is currently the case regardless), and reduce some stronger enforcement powers – such as the licensing approach taken by the GLAA – to a lowest common denominator. In the UK we have already seen a similar problem with the Equality and Human rights Commission. Formerly the Commission for Racial Equality, the Disability Rights Commission and the Equal Opportunities Commission, the new body has access to less funding, and had key powers removed²⁸ under the guise of streamlining its responsibilities.

Article 6

As we note above, funding of inspection generally, and salary limitations for senior inspectors specifically, are creating high turnover and a recruitment crisis for the HSE.

HSE's career offer for inspectors, coupled with the restraints on public sector funding imposed by successive governments, has led to a situation where, according to the HSE's own data the maximum pay available to a main grade inspector has fallen significantly behind comparable jobs in the private and public sector.

We know that Inspectors are leaving in high numbers, and that some of them are seeking jobs with companies that they have formerly inspected.

The issue is one that is specific to the HSE amongst the regulatory bodies responsible for occupational safety and health compliance. ONR and ORR have different career progressions that allow inspectors to progress to a higher pay grade that brings their pay more in line with industry comparators.

Although we have great faith in our inspectors, and we are not suggesting any have ever compromised their reporting in order to win favour with a higher paying potential employer, we remain concerned that the Government's funding approach is creating a structural vulnerability to external financial interests. We urge the Government to work with the HSE and unions to address this.

Article 9

The HSE has recruitment and retention issues for all staff, and this also has a damaging effect on the specific specialist areas mentioned in Article 9. Last year's figures showed that they only employed one medical doctor, and that for years they have struggled to recruit sufficient engineering and electricity technical experts. Evidence for this can be found in the pay remit applications made to the Treasury over several years, where successive business cases have been proposed to allow the HSE to break public sector pay policy due to recruitment and retention risks in specific technical expert areas.

²⁸ <https://www.theguardian.com/society/2013/jan/25/equality-commission-office>

Article 10

In commenting on the sufficiency of inspector numbers we understand that the HSE is responsible for enforcing working time, and OSH protections for around 940,000 workers across the UK.

Working time is inspected and enforced on a purely reactive basis by a single administrative officer in each main office, as just one of their functions. We believe that this equates to around 25 individuals who are responsible for inspecting compliance with protections relating to working time as part of their duties.

The fall in inspector numbers, described above, means that in the opinion of unions the HSE no longer has sufficient inspectors to be able to secure the effective discharge of its duties in relation to enforcing compliance with OSH legislation.

Any analysis of absolute inspector numbers is confused by the HSE employing some of its technical experts as inspectors and therefore they can be included in publicly available figures. And managers who have started their career with the HSE as an inspector are still classed as inspectors in any public figures (including the recent acting chief executive) despite carrying out no inspection work.

Prospect tell us that there are currently, in the whole of the UK, only 426 inspectors of the substantive grade expected to secure compliance with legislation.

We are concerned that neither the Government nor the HSE appear to have any plan or strategy to reverse the declining inspector numbers.

The National Education Union (NEU), furthermore, alerts us to the practical impact of the current shortage of inspectors, due to both current funding cuts and ongoing limitations on career progression. The NEU reports that the section of the HSE responsible for the management of asbestos in buildings has seen a 38% reduction in inspectors since 2012 (26% since 2013). This leaves fewer than 300 frontline main grade inspectors available to cover all industries apart from construction and chemical production. The impact on schools is alarming. 80% of British schools are thought to contain asbestos: 676 have been referred to the HSE for poor asbestos management, far too many for current resources to handle.

Article 12

Labour Inspectors in the UK are empowered as required by the Convention. However, there have been attempts to reduce these powers, including a Government review in November 2014²⁹. In response, the HSE – already under resource pressure – is collecting statistics on when and where their remaining powers are invoked to challenge possible misrepresentation. The UK Government is reminded that the power to enter freely and at any time is fundamental to Convention 81 and must be protected.

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/380221/dwp-powers-entry-review.pdf

Article 16

The HSE has changed its risk-based approach to inspection, which unions believe relied on a generic high-risk status (regardless of regional variations and other anomalies) that led to potentially dangerous workplaces going entirely without inspection. In other circumstances, that policy change would mean an increase in inspection. But the funding and recruitment issues detailed above will inevitably mean that this remains inadequate. We note that the Convention states that inspections must be held “as often ... as necessary”, and that there are other ways of reducing harm and boosting protections for workers, but we strongly believe that inspection is the most effective means of achieving these aims, and that any new government strategy must ensure that inspection is at the centre of its approach and that there is full resource to provide it.

Article 17

In the past 10 years there have been no prosecutions for breach of working time legislation and there has been only one legal enforcement notice served in respect of working time labour protections. This notice was served on a primary care trust and may fall under part II of the convention, in which case there would have been no legal enforcement notices served in industrial premises in respect of working time legislation.

There has been a substantial decline in formal legal enforcement action taken by the HSE for health & safety violations.

Prospect believe that this is directly attributable to the decline in staff numbers, and in particular the failure by the HSE (and Government funding) to address the trend of declining inspector numbers at a time of maximum recruitment.

Article 18

The new sentencing guidelines have increased fines substantially and are perfectly adequate.

However, Prospect is concerned that the increase in potential fine has led to an increase in the time and resource needed to bring successful prosecutions to completion. Even where a guilty plea is secured relatively quickly the increase in fines has led to resource intensive and complex sentencing hearings. The union notes that without adequate resourcing this is resulting in even less capacity to inspect compliance by other employers.

Conclusion

Funding shortfalls across the complex labour inspection system are endangering the effectiveness of what has been, and ought to be, a robust framework for the protection of working people. Inspectors are clearly working hard in all the inspection organisations, attempting to compensate for the limitations placed on them.

Government attempts to instigate money raising elements to inspection partially reduce the impact of big reductions in public funding, but come with a risk of unintended consequences, such as employer reluctance to proactively seek advice on eradicating serious health & safety risks.

Without significant increases in funding, it is difficult to see how the UK can guarantee compliance with Convention 81. Recruitment of labour inspectors to the HSE has little or no chance of keeping pace with the rate of resignations: action must urgently be taken to address dissatisfaction with pay and conditions for experienced inspectors.

The situation is not entirely bleak. Although there is evidence of a worrying trend towards underpayment of the national minimum wage, increasing the funding for proactive enforcement has had a substantial positive impact. Successive governments have greatly increased the budget for enforcement, with the result that arrears recovered for underpaid workers has increased from around £3.5 million in 2014/15 to £15.6 million in 2017/2018.

Such progress is vital, given that Low Pay Commission estimates suggest 439,000 individuals were underpaid in 2017-2018, but it does show that investment in pro-active enforcement is money well spent. It is time the Government applied this across the full expanse of the inspection system.

Worst Forms of Child Labour

In 2002 and 2005, the TUC raised the issue of the recruitment of child soldiers.

As we said in 2002: “While Article 3 (a) of the Convention defines as an unconditional worst form of child labour forced recruitment for armed conflict, and these recruits may have volunteered to serve, the Government still has an obligation to ensure that work of under-18s in the armed forces, just as any other work, does not expose them to hazards which are likely to harm their health, safety and morals. The TUC does not believe that voluntary recruitment removes the obligation on ratifying governments to ensure that the regime within their armed forces protects the safety and lives of those recruits.”

Convention 182

We believe that the Government has yet to fully comply with C182 with regard to the training regime which 16 and 17 year-olds are expected to complete. An Article in The Guardian newspaper³⁰ on 21 August this year points out that the UK is the only NATO member to allow direct enlistment of children, and that it recruited 1,000 16-year-olds in the previous year.

Data supplied by the Child Rights International Network (CRIN) suggests that recruiters intentionally target children who have just received their ‘GCSE’ school exam results, with areas of high deprivation also more likely to be a focus.

CRIN have kindly produced for us a detailed study³¹ of the conditions faced by 16- and 17-year-old recruits with reference to C182, which we fully endorse.

See Annex 3.

³⁰ <https://www.theguardian.com/uk-news/2019/aug/21/stretched-british-army-leaning-on-under-18s-to-fill-its-ranks>

³¹ Annex 3