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GLA LICENSING STANDARDS

RESPONSE BY THE ASSOCIATION OF LABOUR PROVIDERS TO GLA CONSULTATION

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Introduction

In August 2008 the Gangmasters Licensing Authority (GLA) published a consultation document on its licensing standards. Responses are required by 24 October 2008.

The Association of Labour Providers (ALP) represents over 200 labour providers, all of which are subject to the licensing standards of the GLA. The Association has been heavily involved in the regulation of labour providers over the last five years and has played a significant role in developing and refining licensing standards. It therefore has a major interest in this consultation.

Executive Summary

- Six principles should govern the review of licensing standards –

    1. The need to reduce the administrative burden on businesses.

    2. Standards should be directly related to the essential objective of safeguarding the welfare and interests of workers.

    3. The GLA should not gold-plate other legislation.

    4. Licensing standards should not lead to laws and regulations being disproportionately enforced against labour providers.

5. Licensing standards should be concerned with substance not process, in particular they should not make disproportionate requirements in respect of documentation.

6. The GLA should not enforce new interpretations of laws and regulations without proper consultation and consideration.

- The proposed standard in respect of Health and Safety is unrealistic and fails to recognise the relationship between labour provider and labour user.

- Failure to meet administrative requirements in respect of motor vehicles should not be rated as a critical non-compliance.

- The 'reportable' and 'correctable' standards should be abolished, leaving critical and major categories only.

- The automatic fail points score should be 40, with the GLA having discretion where the score is between 30 and 40.

- Systemic failure to pay tax should be a critical non-compliance.

- A number of standards, including those relating to data protection and those requiring documentary evidence, should be removed.

- Compliance with the agricultural minimum wage should be removed completely from the standards.

- Rent charged for accommodation in relation to the minimum wage should be removed from the standards.

- The GLA should use the term 'labour provider' rather than 'gangmaster' throughout.

Principles

The imposition of licensing standards or a review of those standards has to be conducted within a set of principles, which must take account of government policy generally and also what is happening in other sectors of the economy. The ALP considers that six principles should guide the review of licensing standards –

1. The need to reduce the administrative burden on businesses in line with government policy. This government, like others, has expressed a wish to reduce the burden of regulation. Labour providers have seen nothing but a steady increase in the burden of regulation over the years. This has resulted not only from the actions of the GLA but also because of a plethora of other laws, regulations and new interpretations either by the courts or by officials. The changes suggested by the GLA would mark yet a further increase in regulation. The trend needs to be reversed.

2. The licensing standards should be directly related to the GLA's central objective of safeguarding the welfare and interests of workers. They should also be concerned with wholesale tax evasion, not only because of the effect

that this has on tax revenue, but also because of the huge distortive effect on competition which in turn can make it difficult for law abiding labour providers to survive. Conversely, the standards should not seek to ensure compliance with every single law and regulation, particularly those that are not generally enforced in other sectors.

3. The GLA should not gold-plate other legislation, in particular by transforming non-statutory guidance into binding rules. This has been done in the past, for example in respect of requirements on entitlement to work in the UK.

4. Licensing standards should not lead to laws and regulations being disproportionately enforced against labour providers compared with other businesses. Almost every survey of businesses' compliance with various legal provisions shows significant non-compliance. There is little enforcement of many rules and regulations, simply because the resources are not available. If all rules and regulations were enforced all the time then business would probably grind to a halt. Indeed if this had to be done there would be wholesale revision of the rules and regulations. It is unreasonable for laws and regulations that apply to all businesses to be enforced only against those subject to a specific regulatory regime because the resources exist to secure enforcement generally. This point is particularly relevant to the agricultural minimum wage issue discussed subsequently and the restrictions placed on labour providers providing transport which would not apply to labour users doing the same thing.

5. Licensing standards should be concerned with substance not process, in particular they should not make unreasonable requirements in respect of documentation.

6. Over the last few years, there has been a steady succession of new regulations, guidance, interpretations and court judgments that have impacted on the business of labour providers. The GLA has sometimes been very enthusiastic to support and enforce new interpretations which generally have been ignored by others. The GLA should not seek to enforce any new laws and regulations or new interpretations without full consultation with the industry, careful consideration and considerable notice.

Definition of 'fit and proper' (section 1, Qs 1 & 2)

The consultation paper suggests that someone might be refused a licence if they have been refused a licence or had a licence revoked on two previous occasions. This question is wrongly specified. The GLA does not license individuals, it licenses businesses. It does not ask the right questions at the application stage. For example, it fails to identify all of the people involved in the ownership and management of the business; it does not ask for involvement in previous labour provider businesses; and it does not ask for previous criminal convictions.

As a general principle the ALP believes that where someone has had a management or ownership position in a business that has been refused a licence or has had a licence revoked because of serious non-compliance with the licensing standards, then this should be sufficient to prevent them obtaining a licence in the future. There

is no need for an additional standard on this as it should be covered by the 'fit and proper' requirements. The ALP's concern is that in the past people may have been refused a licence or had one revoked on the grounds of what would not be considered serious non-compliance.

The GLA has refused or revoked a number of licences in the previous 12 months on the grounds of 'fit and proper. The decisions taken on the face of it look to have been reasonable. The GLA should however be clearer on what previous actions would render someone being regarded as not "fit and proper". Such actions should include:

- Phoenixing (with a definition of what is regarded as "phoenixing")
- Serious and deliberate tax and NI evasion
- Previous licence revocation on grounds of worker abuse, intimidation etc
- Serious obstruction / presentation of false documentation

It would be reasonable that some restrictions should lapse after a reasonable period of time.

Notifying the GLA of changes in details (section 1, Qs 3 & 4)

The Association supports the list of significant changes in the details of a business that should be notified to the GLA. The consultation paper asked whether it would be appropriate to revoke a licence or impose a financial penalty if a business deliberately did not notify the GLA of changes in details. A simple failure to notify such changes is very common and in itself should not attract any penalty. Whether failure to notify is deliberate is a subjective matter. If a business has systematically failed to notify the GLA of key information then the appropriate action should be taken on the 'fit and proper' grounds, rather than seeking to impose a specific penalty for the failure to notify. Accidental failure to notify the retirement of a director is not serious; deliberate failure to notify that the business is actually controlled by a person with a criminal record and who previously had a licence revoked is serious. The two events cannot be treated equally.

Debt bondage, Harsh Treatment and Intimidation of workers (section 3, Qs 5 & 6)

The Association supports the proposed standards relating to forced labour. This issue is central to the role of the GLA.

The Association is cautious regarding whether withholding wages should be upgraded to a 'critical' rather than a 'major' non-compliance. Withholding wages is a breach of minimum wage legislation therefore it is already within the power of the GLA to regard this as a critical non-compliance.

The Association is concerned that withholding wages as a critical non-compliance may be disproportionately applied by Inspectors. For instance – non payment for induction courses, slow correction of payroll/timesheet errors etc could be construed as withholding wages. Without further clarification of what circumstances would be

regarded as “withholding of wages” the argument is not made to increase this to a critical non-compliance.

‘Effectively providing’ Accommodation (section 4, Q 7)

In respect of standards of accommodation it would seem sensible for the GLA to use the BERR interpretation of ‘effectively providing’. However, this is subject to one of the points set out in the principles. There are not the resources to enforce rules and regulations on standards of accommodation across the economy. The BERR interpretation is also unsatisfactory because it states that ‘the gangmaster may be considered to be providing accommodation in circumstances where...’ This leaves it open to an official to decide whether or not a business is providing accommodation, and the business may have no easy way of knowing how its position will be viewed.

Quality of Accommodation (section 4, Q 8)

This standard is concerned with process rather than substance, that is, that gas installations should be subject to annual safety checks, and even that the details of the checks should be displayed within the accommodation. These standards are far too concerned with process not substance. They also refer specifically to a Corgi registered installer. It should be noted here that Corgi has recently lost its contract and any reference would be better expressed more generally.

Standard 4.3 should be confined to the substantive point, for example “Where workers live in accommodation provided by the labour provider it is safe for its inhabitants.”

Hours Worked, Working Time Regulations etc (section 5)

The new wording proposed for regulation 5.1 is too vague. The Working Time Regulations cover all aspects with regard to shift breaks, daily breaks, weekly breaks, nightworking and annual leave. It should be specified what 5.1 will be concerned with.

Standard 5.2 needs to be reworded to ensure that it is applied in accordance with legislation.

Safe place to work (section 6, Q 9)

Within standard 6 there should be a licensing standard regarded as a critical non-compliance along the lines of “Are workers in significant and immediate risk of serious injury”.

The proposed licensing standards 6.5 and 6.6 are unworkable. Already the provision causes the biggest problem for labour providers. Legally, responsibility for ensuring that a place of work is safe is with the labour user. Labour providers accept that they have a responsibility not to put their workers into a place of work which is unsafe for them. However, to suggest that this requires in every case a site specific assessment that deals with, for example, drinking water and facilities for consumption of food and drink, is unrealistic. Many labour users are not prepared to cooperate in this sort of way and there is no legal obligation for them to do so. The GLA should

not be making requirements that depend on the actions of a third party outside its remit.

It should be sufficient for a labour provider to satisfy itself that it is not placing workers in a dangerous position. In the case of a client that they have dealt with for many years, and who is a significant business with an excellent track record, it would be going too far to suggest that if they are supplying workers for a new plant or under a different contract, that they should be checking up on what the employer has done. No other business is expected to work in this sort of way. The requirement as it stands leads to a box-ticking approach, with GLA inspectors, who apply the current rule inconsistently, being satisfied if documentation is on file which suggests that there has been a full site inspection. Documentation is easy to produce and may imply a position very different from the substance of the situation. This is an example of regulation becoming process rather than substance driven.

The proposal for standard 6.6 with regard to PPE being "provided without charge to the workers supplied" is incorrect at law as the Appointed Person's finding in the Miles decision pointed out.

Transport Arrangements (section 6, Q 9)

The two common sense tests applied by the GLA are appropriate. However, the suggestion that if there is not documentary evidence of a tax disc, an MOT certificate and insurance, then automatically a labour user would have its vehicles deemed to be un-roadworthy, and it would have a critical non-compliance therefore requiring it to be closed down, is disproportionate. Again, it is a process rather than a substantive point. It is possible that a document may have been misplaced or that a labour provider inadvertently may have an MOT certificate which is a few days out of date. This should not be a critical non-compliance. It is easily correctable and has nothing to do with safeguarding the welfare of workers. What should be a critical non-compliance is a vehicle that is clearly unsafe, for example, without seat-belts or with unsafe seats and doors.

Recruitment and Contractual Arrangements (section 7, Q 10)

The Association agrees that prohibiting work-finding fees should be a separate standard classed as critical.

In addition an obligation to hire or purchase significant goods or services as a condition of finding work should be considered likewise, provided this is clearly defined and applied proportionately.

The impact of this on the cost of hiring SAWS workers and/or how this will limit the availability of such workers should be noted.

Restriction on using Additional Services (section 7)

The standards need to recognise the particular position under Scottish law in respect of leases.

Legality and Rights of Workers (section 10, Q 11)

The Association agrees with the simplification of the wording of licensing standard 10.1 to state 'all workers are legally entitled to work in the UK'. However to avoid imposing a legal requirement that goes beyond that which applies more generally, the following words need to be added 'or in the event that it is discovered that workers are not legally entitled to work in the UK, that the labour provider has the statutory defence available provided by the relevant legislation'.

Licensing Standards, Categories and Scoring (Qs 12 – 15)

The consultation document asks whether the existing classification of 'critical', 'major', 'reportable' and 'correctable' should be maintained. The Association has never been happy with the present classification. It is illogical. All failings are correctable even those that are critical, and whether or not something is reportable simply reflects whether there is a regulator. Issues which are reportable or correctable are on the whole of fairly minor importance, which many businesses would fail on if they were ever inspected. It is appropriate that they are brought to the attention of the business and the business asked for an assurance that they will be corrected. However they should not be taken into account in making a decision on whether a licence should be given or revoked. Accordingly, the Association favours removing the 'reportable' and 'correctable' categories in their entirety.

The Association agrees that a single critical non-compliance should be sufficient for a licence to be revocable, but it is important here that 'critical' must mean critical in respect of a systematic failure to meet an appropriate standard, not a simple documentation failure as is suggested in the proposals on transport. For major non-compliances it is suggested that the automatic fail score should be 40 points rather than 30, but that for scores of 30 or more the GLA should have discretion depending on the nature of the non-compliances. Some 'majors' will be little more than process or administrative points, while others will be verging on the critical. There has to be an element of judgement in this.

More generally, the GLA needs to have regard to the Regulators Compliance Code, and to demonstrate that it is in compliance with this code.

In respect of the specific question on whether changes should be made to the scoring of individual standards, the Association believes that systematic non-payment of tax and National Insurance should be critical rather than major. Systematic non-payment of tax is not accidental and it has a seriously distorting effect on the market, making it difficult for labour providers operating legitimately to compete. Illustrating the point made already in this paper about the GLA's concentration on process points, is that VAT evasion is classed as a reportable non-compliance at present, this is wholly wrong.

Removing Licensing Standards (Q 16)

The GLA should, in accordance with government policy on regulation generally, remove those of its licensing standards which are not directly concerned with protecting workers and reducing exchequer fraud, and which properly can be left to

the appropriate regulators where there is one. Accordingly, in addition to specific points covered elsewhere in this response, the Association suggests the removal of the following standards –

- Requiring licence holders to provide their URN and other details to their workers and labour users (1.3).

- Evidence that the labour provider is registered as an employer with HM Revenue and Customs (2.1). The substantive point is tax evasion not registration. Tax evasion can take place by a "registered employer".

- Evidence that a labour provider has an accurate pay roll system in place, whether in paper or electronic form (2.4). What matters here is that pay and payslips are accurate.

- Standards relating to confidentiality (3.9 and 3.10). These relate to compliance with the Data Protection Act. This is a peripheral matter that is not central to the key issue of the welfare of workers. There is nothing in the work of labour providers that suggests that these provisions are more significant for them then they are for any other business. Accordingly, the compliance regime for labour providers should be no different from that of other businesses. Where there are concerns this should be a matter for the Information Commissioner not for the GLA.

- Evidence that any workers working in excess of 48 hours a week have freely signed an opt out (5.2). In passing it should be noted that evidence that an opt out has been "freely signed" is an impossible concept. The offence is actually whether any workers who have worked in excess of 48 hours per week averaged over the last 17 weeks did so only against their wishes. This standard should be removed.

- Making available recording of risk assessments (6.3).

- No discrimination when employing workers (7.1) as there is no evidence that there is any abuse here.

- Documentary evidence of the agreement between the labour provider and all sub-contractors (8.3).

- Securing the worker's permission before transferring them to another labour provider (8.4)

- Requiring documentation showing entitlement to work in the UK (which is not a legal requirement) (9.1).

Supplying Self-employed Workers (Q 17)

Regardless of whether labour is employed by a labour provider as employees under contracts of employment or engaged as self employed workers under contracts for services, Employment Businesses are required by Sections 44-47 of the Income Tax (Earnings and Pensions) Act 2003 to deduct PAYE at source. They are also required

to deduct Class 1 NI contributions. Labour providers cannot avoid their tax and NI responsibility by claiming that workers are self employed; ITEPA and NI regulations do not allow this. Any labour providers that have attempted to avoid their tax liability by such means should either not be regarded as "fit and proper" or if the critical licensing standard of non payment of tax is introduced this matter be regarded as non compliant under this.

It is for the Courts or Employment Tribunals to decide employment status for employment purposes and the HMRC to decide employment status for tax liability purposes. The Association believes that GLA Compliance Inspectors are acting ultra vires in implying a different contractual status to the express contract in place. The GLA should seek legal confirmation on its powers and authority on this matter.

The consultation states that the GLA "apply the same tests as set out in HM Revenue and Customs' guidance". The GLA is incorrect at law to rely on these tests where it is seeking to determine employment status. It should instead, if it is determined that it has the power to do so, be using the latest findings of the Employment Tribunals, particularly with regard to mutuality of obligation. Status of employment determinations are complex decisions taking account of numerous legal precedents. It is, quite understandably, beyond the competence of Compliance Inspectors to make such decisions.

Should it be determined that GLA Compliance Inspectors do have the power to imply a different contractual status then the GLA must take account of the Court of Appeal ruling in James v London Borough of Greenwich that only where it is necessary to make sense of the arrangements between the two parties should a contract of employment be implied where a contract for services is in place.

The consultation asks whether standards should include specific standards relating to the supply of self-employed workers. This question is wrongly presented and should instead ask "should the standards specify which elements apply to employees and which to workers on a contract for services". The answer to this question is that the standards should do this but that in fact this requires only minor wording modification to a few standards.

As stated previously labour providers cannot avoid their tax and NI responsibility by claiming that workers are self employed. However, it is common practice for employers in general to seek to reduce their tax and NI liability by claiming workers who work within their business are self-employed. In determining whether these workers are employees or self-employed for tax purposes it is appropriate for the HM Revenue and Customs' guidance to be used. However it is the HMRC that is the appropriate body to make this decision. Where the GLA discovers service providers who claim that their workers are self employed the GLA should refer this to the HMRC to determine the employment status with regard to tax liability. It would be desirable that there could be a "fast track" set up for this process. Any back payment of tax and NI should be paid before a GLA licence is issued.

Payroll Companies (Q 18)

If a payroll company employs workers who are then supplied to a regulated sector, it is subject to regulation by the GLA. There is no need for any modification of the licensing standards.

Labour Providers based outside the UK (Qs 19 & 20)

The consultation document asks whether the licensing standards should include a requirement for labour providers based outside the UK to comply with the relevant legislation of their home country. Whilst this is laudable in principle it is unenforceable in practice as the GLA does not have the resources to check whether legislation is being complied with, or indeed even to ascertain what legislation is in place and what the general policy is on enforcement.

There is abuse by labour providers based overseas. A number of them in effect charge a fee to the workers, which enables them to be very competitive in the UK market as businesses based in the UK are unable to charge a fee to workers. Where they do charge a fee this is contrary to the GLA licensing standards, and the GLA should concentrate on enforcing this standard in particular, rather than seeking to make new rules which it cannot enforce.

Shellfish Gathering (Qs 21 & 22)

The Association has no comments on this section.

Forestry (Q 23)

It seems sensible that the HSE specific requirements for the forestry industry be incorporated into the standards.

Paying the National Minimum Wage (Qs 24 & 25)

This is a major point for the Association. Already the Association has made representations to DEFRA on the agricultural minimum wage generally (accessible at www.labourproviders.org.uk/). The key points here are that –

- Many labour providers supply workers who may be subject to either the national minimum wage or to the agricultural minimum wage, depending on criteria which may be entirely arbitrary. The same worker doing exactly the same work in exactly the same place may be subject to the national minimum wage one day and the agricultural minimum wage the next, depending on where the produce he is packing comes from. The agricultural minimum wage also has built within it some anomalies relating to holiday pay, and generally is so complex as to be almost impossible to understand. This is not a problem for businesses not regulated by the GLA, as there is virtually no enforcement as there are minimal resources to enforce it. In practice it is only labour providers subject to the GLA who have to comply with agricultural minimum wage requirements.

- The Association believes that in general most labour providers are not subject at all to agricultural minimum wage requirements, as the workers concerned are under a contract for services rather than a contract of service.

- The agricultural minimum wage goes into huge detail requiring not only the basic minimum wage for all workers, but additional amounts for overtime which in practice are so generous that very few labour users are prepared to take on workers to do any overtime. There are also higher rates for particular categories of worker. It can hardly be argued that payments above the national minimum wage involve exploitation of workers, or that holiday entitlements above those applicable to workers generally represent exploitation. Given that the core function of the GLA is to prevent exploitation of workers and that the agricultural minimum wage provisions are complex and almost impossible to enforce, it is suggested that all reference to the agricultural minimum wage should simply be removed, leaving it to DEFRA to enforce in the same way as it has responsibility for enforcing the provisions with farmers. This can be achieved by removing "or agricultural" from the standard.

Similar arguments apply in respect of the operation of the accommodation offset. It is generally accepted that with a few exceptions it is impossible for labour providers, or anybody else, to provide accommodation for workers other than in a tied cottage situation at a rate which falls within the accommodation offset arrangements. (For a worker on the minimum wage the maximum rent that can be charged at present is £31.22.) The Association has made a case to the Low Pay Commission for changes to the current arrangements such that labour providers are in no different position from any other landlord. The consultation document suggests that the GLA is sympathetic with this position. Accordingly, the GLA should simply include within the licensing standards an exclusion in respect of rent charged to workers. As with the agricultural minimum wage, this would leave enforcement in the hands of the body responsible for enforcement generally, HMRC in this case.

Additionally the GLA have adopted a common sense approach to ignoring the HMRC position that deductions for transport to work are a technical breach of the NMW rules. The GLA's position on this should be formalised into the standards.

Standard 2.8 should be rewritten, 'The worker is paid at least the national minimum wage (payment for accommodation and deductions for transport to work will be ignored for this purpose)'.

Use of the term gangmaster

The licensing standards refer throughout to gangmasters, an expression that is both inaccurate and insulting. Paragraph 7 of the licensing standards gives a wholly unconvincing explanation as to why the term has been used. Other regulators do not have any such difficulty. The FSA refers to "firm" not "loan sharks" and the Claims Management Regulator refers to "businesses" not "ambulance chasers". The standards should use a neutral expression such as "labour provider", "business", "person" or "firm".

Detailed Points

Standard 2 guidance refers to “express written permission”. The word “express” is unnecessary and can be removed. It is not used in the standard itself.

Standard 2.5 - the words in brackets “(e.g. for transport)” should be removed as they are confusing here.

Standard 2.7 uses the term “the worker only having worked during the period to which the payment relates”. It is not clear what this means and in any extent is covered by the fourth bullet point “any matter within the control of the gangmaster”.

Standard 2.9 is frequently misapplied by inspectors and needs to be redrafted to avoid this. Inspectors have asked to see details of entitlements in contracts, which is neither necessary nor what the standard says. If an entitlement is statutory it does not need to be expressed in a contract.

Standard 3.5 should be combined with 3.2 and 3.6.

Standard 5.1 needs rewording in line with the latest licensing news.

Standard 6.3 (a process point on risk assessments) should be removed as being unnecessary.

Standard 6.5 should be combined with 6.1. Licensing Standard 6.4 and 7.2 bullet point 2 should be combined with 6.2. .

Standard 6.7 should be combined with 6.10 and written more clearly.

Standard 6.11 should be combined with 6.9 and updated to include legislative changes.

Standard 7.1 (prohibiting discrimination) should be removed as there is no evidence that there is any discrimination against applicants for employment.

Standard 7.2 requires significant rewording. Reference to the identity of the worker could be removed as this is covered by 9.1, reference to experience etc should be combined with 6.2, reference to the worker being willing to work is covered by 3.6.

Standard 7.3 - the words “SSP and other benefits” should be removed as they are not in the rules and are statutory requirements.

Standards 8.3 - Agreements with sub-contractors & 8.4 (transferring workers to another labour provider) should be removed as they are process points.

Standards 9.2 – 9.4 should be combined in one standard and moved to section 6.

CONSULTATION QUESTIONS

The various consultation questions have largely been answered fully in the substance of this response, but for the convenience of the GLA a summary of responses to the specific questions are set out below.

1. *Do you agree that the GLA should adopt a 'three strikes and you are out' policy?*

   No. One strike should be sufficient, but this does depend on the GLA refusing or revoking licences only on grounds where there is systematic failure to comply with licensing standards that are focussed on exploitation of workers and tax evasion.

2. *Should such a restriction be indefinite or lapse after a set period of time?*

   Not relevant given the answer to question 1.

3. *Do you agree with this list of 'significant' changes? [To information that should be notified to the GLA.]*

   Yes.

4. *What should be an appropriate penalty for not informing the GLA of changes?*

   There should be no penalty except in the case of systematic deliberate failure to notify, in which case the 'fit and proper' provisions are adequate.

5. *Do you agree with the proposed standards relating to forced labour?*

   Yes.

6. *The standard in relation to withholding wages is currently classed as 'major'. Should it be upgraded to 'critical'?*

   This is not necessary as it is already covered by the critical standard 2.8 concerning payment of minimum wage.

7. *Do you agree that the GLA should use the BERR interpretation of 'effectively providing'?*

   Yes, but with the reservation that the interpretation is far from satisfactory.

8. *Do you agree with the proposed changes to licensing standard 4.3 [relating to gas safety]?*

   No, as these are primarily a process rather than a substance point.

9. *Do you agree with the proposed changes to licensing standard 6 [breaches in Health and Safety]?*

No, as the provisions in respect of Health and Safety generally are unworkable in practice and the proposals in respect of transport are a process rather than a substance point.

10. *Do you agree that prohibiting work-finding fees should be a separate standard classed as 'critical'?*

    Yes.

11. *Do you agree with the proposed changes to licensing standard 10.1 [legality and rights of workers]?*

    Yes, subject to the addition of a reference to the statutory defence.

12. *Do you think the GLA should continue to use four categories of licensing standard?*

    No, the 'correctable' and 'reportable' categories should be removed.

13. *Do you think the fail score for an inspection should remain at 30 points?*

    No, 30 points should be a trigger at which revocation should be considered, and 40 points an absolute figure at which revocation would occur.

14. *If the licensing standards retain four categories of standard, should 'reportable' and 'correctable' standards contribute to an inspection score?*

    The Association favours removing these categories, but if they remain then they should not contribute to an inspection score.

15. *Should any changes be made to scoring of individual standards?*

    Systematic non-payment of tax and National Insurance should be a critical non-compliance.

16. *Do you think that there are any standards which could be removed in order to better focus the GLA's work?*

    There are a number of standards that should be removed as they are not central to the GLA's objectives.

17. *Should the standards include requirements specifically relating to the supply of self-employed workers?*

    Standards relating to the supply of self-employed workers by labour providers are not required but should be considered for service providers.

18. *Should the standards be amended to reflect the work of payroll and managed service companies?*

    No. If they supply workers, such companies must be regulated and subject to the licensing standards.

19. *Do you think that the licensing standards should include a requirement for labour providers based outside the UK to comply with the relevant legislation of their home country?*

No, as this is impracticable. The GLA should concentrate on preventing such labour providers charging a fee to workers.

20. *If the standards included a specific condition, what category of standard should it be classed at?*

Not appropriate, given the answer to question 19.

21. *Do you agree the interpretation of who needs a GLA licence for shellfish gathering is sufficiently clear?*

No comment.

22. *Do you agree that the twelve licensing standards relating to shellfish gathering should remain as 'critical'?*

No comment.

23. *Should the standards be changed to better reflect the HSE requirements for the forestry industry?*

Yes.

24. *Do you agree with the proposal to introduce a separate standard specifically relating to agricultural minimum wage overtime payments?*

This does not go far enough. The GLA should leave enforcement of the agricultural minimum wage to DEFRA, so that it would enforce only the national minimum wage which is sufficient to prevent the abuse of workers.

25. *What are your views on how the standards could take into account issues relating to the accommodation of said?*

The standards should specifically exclude enforcing the national minimum wage rules on paying for accommodation, as these are nothing to do with the abuse of workers.