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**GANGMASTERS LICENSING AUTHORITY
SUBMISSION TO THE RED TAPE CHALLENGE
BY THE ASSOCIATION OF LABOUR PROVIDERS**

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Introduction

The Association of Labour Providers (ALP) represents over 275 labour providers, all of which are subject to the licensing standards of the Gangmasters Licensing Authority (GLA). The Association has been heavily involved in the regulation of labour providers over the last five years. It therefore has a major interest in any review of the GLA powers.

The Association, together with most other stakeholders in the food and agriculture supply chain, acknowledges the significant improvement achieved in labour supply standards within the food and agricultural supply chain in the last eight years. The GLA has played a major role in this change.

Legitimate labour providers want, and have a right to expect, a "level playing field" in order to compete fairly within the law. To enable this it is essential that action is taken to prevent rogue businesses from undercutting legitimate labour providers, either through tax evasion, worker exploitation or both. To this end, the industry supports an intelligence-led, risk-based proportionate enforcement regime that facilitates a fair, competitive trading environment.

The ALP welcomes Margaret McKinlay to the role of Chair of the Gangmasters Licensing Authority to replace Paul Whitehouse. The ALP supports her statement made to the Defra Select Committee Pre-Appointment Hearing that "It is very important that everyone has confidence in what the GLA does. I say everyone; I am obviously talking about workers, but I am also talking about the labour providers".

To gain and retain the goodwill of legitimate labour providers the GLA must be able to demonstrate to the industry it regulates that it is effective in driving out the rogue gangmasters and establishing a "level playing field".

The GLA is a risk-based, intelligence-led enforcement body focusing on tackling serious cases of non-compliance, an approach the ALP supports, particularly activity that:

- Deals with cases of worker exploitation.
- Tackles unlicensed gangmasters.
- Targets labour providers (and their clients) that gain unfair competitive advantage through charging unrealistically low charge rates achieved through tax evasion, charging finder's fees to workers or otherwise.

The GLA's role has changed since it was formed and continues to evolve. The GLA should rightly focus its enforcement activities on the worst cases of worker exploitation and continue to move its compliance regime towards providing a risk based, lighter touch, lower cost effective regulation mechanism.

Any removal of GLA licence revocation powers would rapidly see a reversion to pre 2006 practices allowing rogue gangmasters to undercut legitimate labour providers and exploit workers.

ALP Members opinion of the GLA

In a confidential survey conducted by the ALP between 27th October and 10th November 2011:

71% of ALP members were in favour of Gangmaster Licensing.

66% said that GLA licensing had reduced fraud/illegal activity. A further 13% thought it difficult to say and 21% said it had had no impact.

Moving towards Lighter Touch Regulation

As the Regulators' Compliance Code 3.2 states: "Regulators should keep under review their regulatory activities and interventions with a view to considering the extent to which it would be appropriate to remove or reduce the regulatory burdens they impose."

The ALP's position with regard to GLA licensing decision making is a straightforward one, that decisions should be "clear, consistent and proportionate". The Association was increasingly concerned from 2009 until mid-2010 regarding the apparent disproportionate sanctions being applied by the GLA in relation to the non-compliance identified. This matter was raised as a key concern by the Association and the GLA has taken a constructive approach to the representations made on this matter and recent decisions seen by the Association seem to be taking a proportionate line.

The GLA is currently undertaking a three yearly review of its Licensing Standards. As part of this review the GLA should amend its licensing decision process to demonstrate an evolution towards lighter touch regulation without limiting the powers it has at its disposal.

The current GLA Licensing Decision process may be summarised as:

1. Compliance / Application Inspection
2. Inspection Report
3. Licensing team decision
4. Right of appeal

This process is:

- Deficient with regard to natural justice in that the inspected labour provider is not informed of the allegations against him and has no opportunity to respond to the GLA evidence prior to a decision being made by the GLA Licensing team.
- Contrary to the Regulators' Compliance Code 8.2: "When considering formal enforcement action, regulators should, where appropriate, discuss the circumstances with those suspected of a breach and take these into account when deciding on the best approach."

Firstly, the GLA should amend its licensing decision process to the following.

1. Compliance / Application Inspection (as now)
2. Inspection Report (as now)
3. Licensing team "minded to" notification letter (other than where immediate action is required) outlining allegations and supporting evidence. This should be issued within four weeks of an inspection or an interim notification provided. It is not acceptable for the GLA to have provided no response to a labour provider, as regularly happens, many months after an inspection (new)
4. Right of written response within a four week period (new)
5. Licensing team decision (as now)
6. Right of appeal (as now)

Secondly, the GLA should amend its licensing decision regime to provide itself with the latitude to take decisions on a proportionate basis as fit the situation of the case as follows:

- Where a score of less than 30 points exists, the process of issuing Additional Licence Conditions (ALCs), which must be corrected within a defined period, continues (as now).
 - Where a score of more than 30 points exists, the GLA may take a range of responses based on the scale and seriousness of their findings as follows:
 - Where the breaches are relatively minor or technical in nature, the GLA should issue ALCs but not revoke the licence of the business. The ALCs must be corrected within the defined period. If the licence holder fails to comply with an ALC the licence may be revoked as is allowed under Licensing Standard 1.3. If the licence holder disagrees with one or more of the ALCs, s/he may appeal to an Appointed Person whilst trading continues.
- On this latter point the GLA should ensure that the appeal process does not provide a mechanism for licence holders to continue trading whilst clearly and grossly operating in a non-compliant manner.
- Where the breaches are more serious, to revoke without immediate effect allowing the licence holder to appeal and apply for a new licence (as now).
 - In the case of a “significant risk” of serious damage to human health, revocation without notice is likely to be appropriate (as now).
- The “fit and proper” bar, which effectively prevents those named from trading for two years, is a major sanction that should be used only where applicants or licence holders have demonstrated significant breaches of the licensing standards and fail to show the competence or willingness to comply with the licensing standards.

These changes to the licensing decision regime should be made for the following reasons:

- They can be made quickly and easily within the GLA’s current review of licensing standards.
- They would demonstrate an evolution towards lighter touch regulation without limiting the powers that the GLA has at its disposal.
- They adhere to the principles of natural justice.
- They would provide latitude for the GLA to make proportionate decisions when there have been relatively minor or technical breaches of critical licensing standards. As such they are in accordance with the Hampton Principle in the Regulators’ Compliance Code that: “Regulators should recognise that a key element of their activity will be to allow, or even encourage, economic process and only to intervene when there is a clear case for protection.”
- They would reduce the GLA’s and labour provider’s legal fees as more issues would be resolved at a pre-legal stage.
- They are in accordance with the Regulators’ Compliance Code 8.3: “Regulators should ensure that their sanctions and penalties policies are consistent with the principles set out in the Macrory Review.

The future of the GLA and the Employment Agencies Standards Inspectorate

The ALP is a signatory to the attached paper “Better regulation for worker protection – Proposal for a common position” which summarises the issues concerning the regulatory framework for the recruitment and labour supply sector generally.

The future of the Gangmasters Licensing Authority and the Employment Agencies Standards Inspectorate

Better regulation for worker protection – Proposal for a common position

This paper summarises the critical issues that should be of concern to the Coalition government concerning the regulatory framework for the recruitment and labour supply sector generally. The proposal seeks to establish a common position which has multi-stakeholder support, provides a level, competitive playing field for business, reduces regulatory burdens and exchequer fraud and offers greater protection for vulnerable workers through intelligence led, proportionate enforcement action.

This position is supported by the following organisations:

Anti-Slavery International

Association of Labour Providers

Ethical Trading Initiative

Institute for Human Rights and Business

Oxfam GB

The following factors are significant:

1. The Gangmasters Licensing Authority (GLA) has considerable resources and powers compared with other regulators in the same area, which means that there is differential enforcement between sectors. As a result of this disparity, much employment law and other regulations are enforced effectively only against businesses within the GLA licensed sector. In its report on human trafficking published on 6 May 2009, the Home Affairs Select Committee noted:

“We agree that existing employment law, the National Minimum Wage, regulations on rented accommodation and so on should be sufficient to prevent the sort of abuses highlighted by the Gangmasters Licensing Authority and UCATT – but only if they are enforced. It seems to us that, outside the Gangmasters Licensing Authority’s sectors, enforcement is at best patchy and at worst non existent.”

2. The resources and powers available to the GLA combined with its active, intelligence-led approach contrasts in particular with the Employment Agencies Standards Inspectorate (EAS), which is generally reckoned to be an inefficient regulator relying largely on complaints. This is as brought out in the key findings of the parallel Hampton Implementation Reviews of the two bodies:

The Hampton Implementation Review Report (2009) of the GLA found:

- The GLA’s impact in improving working conditions for some vulnerable workers has been impressive, particularly in view of its relatively small size
- The GLA has a good awareness of the unintended consequences of its operational decisions and takes proactive steps to minimise these
- The GLA has done well in building consensus amongst its diverse stakeholders on the best way forward with regulation
- The GLA has actively sought to minimise any unnecessary additional regulatory burdens that might have followed its licensing regime.

The Hampton Implementation Review Report (2009) of the EAS found:

- EAS’s strategy and operational systems should keep up with changes in the industry.

- Currently sanctioning options are limited. EAS has insufficient powers to address rogue businesses (i.e. no 'stop now' orders or administrative penalties available).
 - The EAS capacity to store, analyse and share data related to business risk and non-compliance is weak.
3. The Government has stated that an extension of the Gangmasters Licensing Authority scheme is not on its agenda and that it is committed to effective, risk-based enforcement by the EAS and the government's other workplace enforcement bodies.

Extensive evidence demonstrates that exploitation of workers by unregulated labour providers is widespread across a number of sectors, in particular hospitality, care and construction and that further measures are required to strengthen protection of vulnerable workers' rights in these and other sectors. These high-risk sectors have been well-documented by the government, for example by BIS in its 2010 evidence to the Low Pay Commission regarding National Minimum Wage complaints in the hospitality sector, <http://berr.gov.uk/policies/employment-matters/rights/nmw/lpc> ; by Rita Donaghy in her 2009 inquiry report 'One Death is Too Many' looking at fatal accidents in the construction sector <http://www.dwp.gov.uk/publications/policy-publications/fatal-accidents-inquiry.shtml> ; and by the Treasury consultation in 2009 on false self-employment in the construction sector http://webarchive.nationalarchives.gov.uk/+http://www.hm-treasury.gov.uk/consult_false_selfemployment_construction.htm

4. Legitimate employment businesses and agencies want, and have a right to expect, a "level playing field" in order to compete fairly within the law, as do those using their services. To enable this it is essential that action is taken to prevent rogue businesses from undercutting legitimate labour providers, either through tax evasion, worker exploitation or both. An independent survey of GLA licensed labour providers by the Universities of Sheffield and Liverpool in 2008 found that 79% were in favour of the licensing regime. To this end, the industry clearly supports an intelligence-led, risk-based proportionate enforcement regime that facilitates a fair competitive trading environment.

Proposal

To achieve this fair, competitive trading environment across all sectors, whilst protecting vulnerable workers and reducing the regulatory burden on the taxpayer, the group proposes a staged process the first stage of which would be some administrative measures to make the current legal requirement more effective and during which the scale of exchequer fraud and worker exploitation in the currently unlicensed sectors should be assessed.

Stage 1

1. Functionally merging the EAS into the GLA. GLA would run EAS under its current management and intelligence-led operational processes. This can be achieved by ministerial order and requires no change to legislation.
2. Initial operation of 'GLA / EAS' to come under a Service Level Agreement between BIS and DEFRA.
3. Pay and Work Rights Helpline to come within the remit of the newly merged 'GLA / EAS'.
4. The merged GLA / EAS would continue to apply current GLA licensing and inspection procedures to businesses within the current GLA mandated sector whilst adopting a proactive, intelligence-led, proportionate approach to those employment and labour agency businesses currently working within the remit of the EAS.
5. Governance of the two bodies to be through a smaller, more strategic board, selected to provide the necessary balance of skills and expertise.

Stage 2

The pilot stage will allow a period in which the scale of exchequer fraud and worker abuse in other sectors would be assessed.

1. GLA and EAS are merged into one body under the sponsorship of BIS.
2. All employment businesses and agencies not currently falling under the current GLA mandate would be required to register (for a modest annual fee) with inspections led by intelligence and identified risk (in accordance with Hampton Principles). This would require primary legislation. In the interim a voluntary registration system could be introduced, as was done for labour providers prior to the Gangmasters Licensing Act becoming law.
3. The merged body to be responsible for monitoring compliance with the Agency Worker Regulations 2010.
4. Infringements of legal requirements would result in Macrory penalties and ultimately prohibition to trade. Prohibition to be based broadly on the current GLA points-based revocation system, with 'fit and proper' trading bars available.
5. The criminal offences of trading whilst unregistered or using an unregistered employment business or agency should remain.

Advantages

1. Bringing the whole recruitment and labour supply sector currently outside the GLA mandate under a system of mandatory registration and prohibition would help to ensure the necessary conditions for legitimate business to operate and compete fairly from a secure foundation, whilst affording better protection to workers.
2. The staged approach allows a pilot period in which the scale of exchequer fraud and worker abuse in other sectors would be assessed. Sectors shown to harbour exceptional levels of exploitation, such as hospitality, care and construction, would be the first to be brought under a registration system.
3. This approach will lead to financial savings in terms of bureaucratic and administrative harmonisation whilst achieving the Government's commitment to effective, risk-based enforcement.
4. Merging GLA and EAS will reduce bureaucracy and boost efficiency by allowing one board and management team to seek to maintain common standards across the recruitment and labour supply industry.
5. A small registration fee with annual re-registration will not deter legitimate business and will offset the cost of additional enforcement activity.

19th October 2010