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## **Gangmasters Licensing Consultation**

### **Response by the Association of Labour Providers to GLA consultation document**

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#### **Introduction**

On 17 October 2005, the Gangmasters Licensing Authority (GLA) published a consultation document on the proposed arrangements for the licensing scheme under the Gangmasters (Licensing) Act 2004 and the fees that will be charged to labour providers. Comments are sought by 12 December 2005. The consultation document is available at <http://www.gla.gov.uk/documents/consultation/Gangmasters%20Licensing%20Consultation%20October%202005.pdf>.

This paper is the response of the Association of Labour Providers to the consultation document. The ALP was founded by 18 labour providers in January 2004. Its membership has subsequently grown to 132 labour providers. It is generally recognised as the representative body for those labour providers that will be regulated by the Act. This response is based on the practical experience of labour providers who have provided their comments on the GLA's proposals to the Association. The response should be taken to be that of all 132 members of the Association.

The Association is separately submitting a response to that part of the consultation document dealing with the fee proposals. This is referred to briefly in this response for completeness. A copy is accessible at [www.labourproviders.org.uk/policypapers/](http://www.labourproviders.org.uk/policypapers/).

The response is divided into the following sections –

- An executive summary.
- An analysis of four major issues: proportionality and targeting, the inspection/audit process, GLA costs and the fee scale, and information on licences.
- Comments on the draft licence conditions.
- Comments on the draft application guidance.
- Comments on the draft statutory instrument.
- Comments on the regulatory impact assessment.
- Responses to the consultation questions.
- Comments on work following the consultation exercise.

On 3 November the GLA issued a revised version of the licensing standards. Although this is not part of the consultation exercise comments on this version are included as Appendix 1.

## **Executive summary**

The proposals fail to adopt the targeted and proportionate approach that is now standard government policy. Labour providers will be expected to meet much higher standards, particularly of record keeping, than other businesses.

The GLA's proposals for a strict pass/fail in respect of audits are unreasonable. There should be provision for a licence to be granted after any deficiencies have been corrected.

The licence conditions have adopted the kitchen sink approach and if adopted would mean that labour providers to the agriculture and fresh produce industry alone would be subject to a regime of inspection and enforcement at a totally different level from comparable businesses in the UK. This cannot be justified. It is appropriate to narrow down the licence standards to those where there is some evidence of problems in the sector being regulated and not to attempt to cover everything.

The GLA's current proposal is that the fee scale should range from £660 to £32,500 a year. The general level of fees is far too high and the proposed banding arrangements are illogical. The fee scale should be based on turnover in the regulated sector going forward. Those labour providers that have not had a TLWG audit should pay for the full cost of a GLA inspection. The fee scale should run from £250 to £2,000. The running costs of the GLA should be reduced by 30% and any shortfall in income should be met either by Defra or by the other beneficiaries of the scheme, in particular labour users and their customers.

Labour providers are businesses and the licensing regime is about businesses not individuals. The proposal that labour providers should designate people "who agree written terms and conditions" misunderstands the way that labour providers operate and would cause unnecessary complications in practice.

Substantial changes are required in the detail of the licence conditions, the application guidance and the statutory instrument.

The partial RIA is generally reasonable, subject to the comments already made about the costs of running the GLA. However, the assumption that there will be 1,000 labour providers looks to be on the high side in the light of experience with the TLWG code and the experience of other regulators.

It is clear that many changes will be needed to the draft licence conditions. There are also some significant issues on the timing of the introduction of the licensing regime on which there has as yet been no consultation. There should be a further round of consultation, if only for a few weeks, otherwise there is a real risk of a very unsatisfactory licensing regime being introduced.

## **Proportionality and targeting**

The proposals do not meet the principles of good regulation as articulated by the Better Regulation Task Force. They fail in respect of proportionality (in particular "enforcement regimes should be proportionate to the risk proposed"), targeting (in particular "regulation should focus on the problem, and avoid a scatter gun approach") and consistency (in particular "enforcement agencies should apply regulations consistently across the Country").

On targeting there is a scatter gun approach with no fewer than 38 “critical” non-compliances being identified in the licence conditions. Other non-compliances are in respect of areas of the law that have fallen into general disuse (for example on record keeping in respect of employment of children) and where there is no evidence of abuse by labour providers (for example confidentiality).

On proportionality, the result of having failures in respect of documentation may be a critical non-compliance. Few labour providers (or any other employers subject to the tests) would pass a GLA inspection as proposed. The GLA is proposing an absolute approach with every issue being either a pass or fail, with an attempt to introduce proportionality through a points system. Other regulators apply the proportionality test to each issue. The TLWG had little difficulty in agreeing on its tests in respect of proportionality, which for convenience are set out below. The GLA needs something similar.

**“Critical non compliance**

A critical failure to comply with the code of practice resulting in –

- Serious risk of personal injury or ill health.
- Use of trafficked workers or bonded labour.
- Systematic payment of less than the minimum wage.
- Severe restriction of freedom of association.
- Tax evasion.

Any critical non compliance should be communicated immediately to the labour provider, labour user, code secretariat and customer. The offending practice should cease immediately. In extreme cases (particularly where there is a risk to life and limb) enforcement agencies may be informed.

**Major non compliance**

Failure to comply with legislation that is significant but not critical.

The labour provider should agree to action over an agreed timescale (within 28 days if practically possible) and confirm that the required action has been taken. There may be a need for a revisit by an auditor to verify that remedial actions have been taken.

**Minor non compliance**

A minor or technical failure to comply with the law or the good practice requirements of the code.

The labour provider should agree to consider these points and to implement remedial action to comply with those requirements which are legal.”

The GLA seems to have adopted a scoring system but this is not spelled out; rather it has to be inferred from examples given in Appendix 2 to the draft licence conditions. It seems to be –

Health and safety related critical – 20 points

Reportable – 10 points

Other critical – 15 points

Correctable – 5 points.

A score of 30 points would result in a fail. All the critical examples given in the appendix relate to documentation not to substance.

On consistency, the proposals fail in two respects. The proposed regime is far more onerous than the TLWG regime, yet most labour providers that have had a TLWG audit will be deemed to be suitable for a licence. The effect will be pulling up the drawbridge, which inevitably is anti-competitive. There is also an inconsistency with other regulators who do

not apply anything like similar standards. For example, with the proposals as they stand, only labour providers subject to the Act would be required to enforce the legislation on parental and local authority approval for children under school leaving age to work.

The effect of this approach can be illustrated by comparing the draft licence conditions with the TLWG code. Some minor non-compliances for the TLWG code would be critical non-compliances for the Licensing Standards as set out in the draft. There must be some latitude similar to that exercised by other regulators. It would be useful to consult with HMRC on this in respect of income tax inspections. Following are some examples of specific standards where the absolute approach would be disproportionate –

2.2 “Where any deductions from wages other than those legally required are made, eg for transport, there is evidence on file of workers’ written consent”. There may be examples where the written consent has been mislaid or the worker simply has never returned the form, having accepted verbally the deduction.

5.2 “there is evidence that any workers working in excess of 48 hours per week have freely signed an opt out”. Again, there will be cases where the documentation is not complete.

9.2.4 relating to written consent by a local education authority and parents for employment of workers between the ages of 13 and minimum school leaving age. Few employers comply with this.

As drafted the standards would also allow unverified statements by workers to result in a complete failure of the inspection. For example –

3.1.1 “Workers are treated in a fair and lawful way.” Taken literally, if a worker says he has been treated unfairly because he should be paid more this could result in a failure of the inspection.

4.4 Worker interviews will determine whether that accommodation is safe and has the appropriate facilities. The “appropriate facilities” criterion is very subjective.

7.1.1 “Workers confirm that they broadly understand the basis on which they are employed.” Many workers do not understand the basis on which they are employed, however hard the employer tries.

The licence conditions have adopted the kitchen sink approach and if adopted would mean that labour providers to the agriculture and fresh produce industry alone would be subject to a regime of inspection and enforcement at a totally different level from any other business in the UK. This cannot be justified. It is appropriate to narrow down the licence standards to those where there is some evidence of problems in the sector being regulated. It is suggested that the following sections are deleted in their entirety –

- Workers’ accommodation. The TLWG decided that in practice it was not possible to inspect workers’ accommodation. This may be a long way from the work place or from the head office of the labour provider. Inspectors tend to work only during the day when the accommodation may not be accessible and, if it is accessible, there may be no evidence of how many people are living there. Only a minority of labour providers provide accommodation and it may well be the case that the workers employed by other labour providers are living in far worse accommodation where they are being exploited. If accommodation is covered then worker interviews may reveal such cases but the GLA would be powerless to do anything about them – other than report them to the local authority.
- Breaches in health and safety including training. This needs to be narrowed down to those matters for which the labour provider alone is responsible. Currently 6.1

- allows for a critical non compliance where a labour user does not properly control health and safety risks for which the labour provider has no responsibility.
- Under age working. In practice this is not an issue at all for the majority of labour providers and is probably far more of an issue for direct employment. Unless there is some evidence that under age working is a problem in the sector, this section should be deleted. In any event, the point has already been made that the chances of obtaining the necessary written evidence for any employer are small. (There is no objection to employing an under age worker being a “critical” issue; the objection is to have to produce the necessary consents for a worker who may be legally employed.)
  - Confidentiality. There is nothing to suggest that there is a particular problem with labour providers in respect of confidentiality and this requirement would be difficult, if not impossible, to audit.

### **The GLA inspection/audit process**

This issue follows on from the discussion on proportionality and targeting. With the proposals as they stand many labour providers would fail the inspection process, not because they were exploiting workers or evading tax but rather because their documentation was not in order. This issue needs to be partly addressed in framing the licence conditions but also in the inspection and audit process.

Currently the intention is that for those labour providers that have had a TLWG audit, the audit report will be examined against the GLA licence conditions using a scoring system. The current proposal is that a score exceeding 30 points would result in a failed inspection. Using the points system described earlier would be moving the goalposts substantially after the game has begun. Labour providers were not informed that this was likely to happen. Many of the non-compliances identified in TLWG reports, particularly in the early stages, were unreasonable. The labour providers have generally not bothered to challenge these because it was not necessary to do so. The labour provider was simply concerned that the audit was completed and their name was duly put on the list of those labour providers that had been audited. The audit reports will now be used for a different purpose. It would be reasonable to seek from labour providers confirmation that they had addressed issues in the audit report and, where necessary, this would be verified. At present, the GLA seems to be proposing that the only option would be a complete inspection even if there were, say, just three non-compliances, all of which have been satisfactorily addressed.

In respect of inspections for those labour providers that have not had TLWG audits, the concern is that the moment the inspectors rack up 30 points because of non-compliances the inspection is ended and the labour provider has sacrificed a fee which is described as an application fee (although in practice it is a licence fee) of anything between £660 and £32,000. This is disproportionate, unreasonable and indeed almost extortionate. A proportionate and targeted approach would be to identify areas where the licence conditions are not met and to require the labour provider to produce evidence that they have been met and, if necessary, to meet any additional costs in verifying this information. The practice adopted by inspectors in the licensing system for employment agencies that was abandoned in the 1990s is perhaps a useful model. If serious deficiencies were found the agency would have to have to stop taking new business (not through a formal closure but simply through saying that has no vacancies or workers for the time being) until the problems had been corrected, sometimes under the noses of the inspectors.

The GLA's proposals that fees should be non-refundable is unreasonable generally and again can be considered extortionate. It is in order to charge an application fee but clearly what is being proposed is a licence fee. It covers much more than the application process. If the GLA wishes to charge a separate application fee that is not refundable then this is in order but it cannot be the same as an annual licence fee which on its own figures could be as high as £32,500.

### **GLA costs and the fee scale**

The Association is making a separate submission on the GLA costs and proposed fee scale. This is accessible at [www.labourproviders.org.uk/policypapers/](http://www.labourproviders.org.uk/policypapers/). For convenience the Executive Summary of this submission is set out below –

“The GLA's full year operating costs are £2.1 million. This is excessive for the task that the GLA has. The costs should be reduced by 30%.

It is unreasonable for the GLA to take a full year's licence fee when it declines an application for a licence.

The GLA's current proposal is that the fee scale should range from £660 to £32,500 a year. The alternative is a flat fee of £2,130.

The proposed fees are three times higher than those identified in the initial regulatory impact assessment for the legislation. The fact that this can happen with little comment and nothing happening as a result calls into question the validity of the RIA process.

The general level of fees is far too high. The fees are disproportionate in relation to what other regulators charge, the profits of labour providers, the regulatory process and the position of other labour providers and competitors to those labour providers subject to the Act.

The proposed banded scale is illogical and unfair, particular the proposed nine-fold increase in the fee at a turnover of £5 million.

Those labour providers that have not had a TLWG audit should pay for the full cost of a GLA inspection, about £1,125. The present proposal for a £250 discount for those labour providers that have had a TLWG audit, will not achieve the objective of encouraging labour providers to have a TLWG audit.

The fee scale should be based on turnover in the regulated sector going forward.

The fee scale should run from £250 to £2,000. Any shortfall in the running costs of the GLA should be met either by Defra or by the other beneficiaries of the scheme, in particular labour users and their customers.”

### **Information on licences**

The licence conditions require details to be given of those “responsible for authorising contracts with labour users”. Paragraph 33.6 of the RIA assumes that labour providers with turnover of over £1 million will have an average of 30 names per application and labour providers with less than £1 million turnover will have an average of two names per application. However, in paragraph 33.10 it is suggested that labour providers with less than £1 million turnover will have an average of five names per application.

The concept is unknown in labour providers. They are businesses and trade as businesses, not individuals. In most labour providers with a turnover of under about £3 million one person is running the business and decides on how business should be done. In large companies there may be one or two other people who have this authority. Contracts may be

agreed by other staff (in the same way as a salesman agrees a contract with a customer) but they are not authorising contracts. If labour providers have to provide names in order to get a licence then no doubt they will do so, but it is not appropriate for regulators to force businesses to invent fictitious positions, presumably to deal with some unfortunate wording in the Act.

The concept of names on licences should be dropped.

### **Comments on licence conditions**

The Association's comments stem largely from the points on proportionality and targeting that have already been made.

1.1 Possession of valid GLA licence. This is out of place in the licence conditions and produces a circular argument, that is that a condition of obtaining a licence is having one.

2.1.1 and 2.1.4 It is difficult to see why there is a distinction between registration for VAT and registration for income tax.

2.2.2. needs to allow for minor errors in the same way as 2.1.2 does, eg "There are arrangements in place to ensure that workers consent to deductions from wages other than those legally required, eg for transport."

2.4 needs to allow for minor errors in the same way as 2.3 does, eg "There are arrangements in place to ensure that workers receive paid annual leave entitlement and other statutory benefits to which they are entitled."

2.5 again needs to allow for minor errors, eg "There are arrangements in place to ensure that workers receive itemised, accurate payslips for each paid period showing their income tax and NIC payments."

3.1.1 - The words "a fair and" should be removed. It is sufficient to require that workers are treated in a lawful way. This is a legal requirement, and generally the legal requirements are clear. To impose on this sector alone a requirement to treat workers in a "fair" way is unreasonable, as what is fair is a matter of subjective judgement.

3.2.2 seems unreasonable. Is it the intention that a labour provider is not allowed to charge interest on a loan? If so, this must be stated and the legal justification for it given.

3.4 needs to allow for a proportionate approach, for example by inserting the word "systematically" before "required".

3.5.2 needs to allow for the different types of contractual arrangement between workers and labour providers.

3.5.3 refers to "equal ops procedures". It is not clear what this means, in particular whether it goes beyond legal requirements.

3.6 should be taken out in its entirety, as there is no evidence of abuse by labour providers in respect of confidential information. There is no reason why labour providers should be treated differently from other businesses in this respect.

4.3 and 4.4 need to be amended to make clear that labour providers can be held responsible only for their own actions. For example, if a labour provider lets out a two-bedroomed house to two people who then sublet it such that there is overcrowding, this is not something that can be held against the labour provider.

4.4 needs to refer explicitly to housing provided by the labour provider.

5.1 needs to allow for a proportionate approach, such as “There is a system in place for recording workers’ hours and ensuring that they receive the breaks permitted by statute.”

5.2 needs a proportionate approach, such as “Arrangements are in place to obtain freely signed opt outs from workers working in excess of 48 hours a week.”

6.1- The reference in brackets to “labour user premises” should be removed as a labour provider cannot be held responsible for what goes on in the premises of a labour user and, in any event, the GLA has no authority over labour users and is not able to inspect their premises. 6.1 needs to be rewritten along the lines of: “Health and safety risks that fall within the responsibility of the labour provider should be properly controlled”.

6.1.2 should be modified to something like “There are arrangements in place to ensure that appropriate risk assessments have been undertaken in respect of all workers.” Many labour users will rightly refuse to provide risk assessments to third parties. It is in order for a labour provider to rely on the assurance of a labour user that risk assessments exist.

6.1.3 should either be removed or restricted to risk assessments prepared by a labour provider.

6.2.1 – the words “confirmed in writing” should be removed unless this is a legal requirement.

6.2.2 should exclude cases where the labour user has accepted responsibility for training.

6.3. should be restricted to circumstances in which the labour provider has accepted responsibility.

6.3.4- It is not a legal requirement for businesses to provide their workers with access to food. The requirement should be removed.

6.4.4 should remove the reference to “if using a foreign licence, the date on which the holder entered the UK” as this rather quaint notion of date of entering the Country is out of date in the Ryanair era. Licences from EEA countries are in effect the same as those from the UK and it is discriminatory and unnecessary to require this additional information.

6.4.5 should refer to public service vehicles “(PSV)” not “(PCV)”. The words “used for hire and reward” should be added after “vehicles”.

7- The first line of the comment should make it clear that this applies only where workers are recruited in the UK, not where they are recruited in other countries.

7.1.3 second bullet point should refer to “any professional body” only where membership of the professional body is required as a condition of doing business. Professional bodies have all sorts of requirements that they may seek to impose on their members but they are irrelevant unless there is a legal requirement to belong to the professional body as a condition of doing business. As this seems irrelevant to the sort of work that the Act is seeking to cover, all references to membership of a professional body can usefully be removed.

7.2.1- It may be a legal requirement for a contract for services to be issued before work commences but this is not practical in many cases and is not generally enforced.

7.2 misunderstands the nature of the business. Some workers come to a labour provider and want work within an hour and do not expect to be interrogated as to whether they understand particular terms and conditions.

8.1 needs to allow for the position before it becomes an offence to use unlicensed labour providers, and the words “properly and” can usefully be deleted as they add nothing.

8.4 needs to take a proportionate approach.

9.1.1 is not clear as it stands. The legal requirement is not to employ an illegal worker. Having the appropriate documentation is a defence not a legal requirement. Also, this is duplicated in 9.2.

9.1.3 needs to have a proportionate approach, such as “Arrangements are in place to record days and hours worked of all workers”. In any event this can be removed as it duplicates 5.1.

9.1.4 can be removed as it is covered by 8.2.

9.2.4 should be removed as this legal requirement has fallen into disuse.

9.2.5 should be removed as it is covered by 5.1.

10 can be removed in its entirety.

10.1 is already covered by 9.1.2.

10.2 is superfluous as student workers get round the requirement by working 20 hours a week for one employer and additional hours for another employer, sometimes in the informal economy.

Appendix 1 begins by referring to “the Act”. Somebody reading the Act would not find these requirements. This reference needs to be spelled.

### **Comments on draft application guidance**

P. 80 refers to Inland Revenue and Customs and Excise. The references should be to HMRC.

The bullet point referring to “those who authorise contracts with the labour users” has been dealt with earlier. If it is left in it will cause complications and considerably lengthen the process.

On page 80 the reference to a management team should be removed. Only individuals are being assessed. No information is being requested of members of a management team.

On page 81, it is stated that the fee is an application fee. It is manifestly not; it is a licence fee and it is wholly unreasonable for the fee to be retained by the GLA if, as a result of the information given in the application, no licence will be granted. This would mean that if it transpires that an organisation does not need a licence then it will still have to surrender its fee.

On page 82, there is a reference to “Immigration Nationality Department”. There are other references to Immigration Department and Home Office. There should be a single correct term used, that is “Immigration and Nationality Directorate of the Home Office”.

On page 82 the reference to “appropriate authority” should be to “principal authority”.

On page 84, the list of subjects covered by the licensing standards no longer corresponds entirely with what the licensing standards cover, in particular pensions and trade union membership.

[The numbering of questions is odd. There are questions 1 – 7, then questions 1 – 9 then section 2 questions 1 – 13. Comments are in the order of the questions.]

Question 1 should refer to the type of business in the first and last lines. The final category should be “company” not “corporate body”.

Question 2 should ask for a trading name only where this is different from the company name. The commentary implies that every company must have a different trading name.

Question 3 should simply ask “if a company give the registered number”. People running companies do not need to be told they have a unique number.

Question 4 should not refer specifically to the Inland Revenue.

Question 5 should begin with “When a company registers for VAT a VAT number is issued.”

Question 6 assumes that companies can give a physical location. Some companies may not have one and in some cases this location will be outside the UK. It is noted that applicants are not asked to give a head office address or address for correspondence. Is this intentional?

The final two sentences of question 7 should be removed. It is not correct that customers “will need to check” that they are dealing with a licensed labour provider. The offence is dealing with an unlicensed labour provider.

In relation to the questions the principal authority should answer (the RIA assumes that someone other than the principal authority will answer these questions) –

Question 1 should presumably have a time limit, taking account of the Rehabilitation of Offenders Act.

Question 2 asks for nationality. It is not clear why this is needed. If it is wished to retain the question then the reference should be to “nationalities” not “countries”.

Question 3 is not relevant and should be deleted. The question may also be difficult to answer meaningfully.

It is assumed that question 4 refers to a county court judgement against the principal authority not against the business.

In question 6 the reference to “Immigration National Directorate” should be changed as outlined earlier. The commentary should usefully indicate that nationals of other European Union or EEA states do not require visas to work in the UK. The last sentence should be removed as it implies that foreigners are dodgy.

Question 7 is out of place because it is asking an individual, whether in his capacity as an employer, an employment tribunal has found against him. If it is wished to know whether an employment tribunal has found against the business this should be the appropriate question asked and it would need to be in a different section. It should be borne in mind that most large employers will have been before employment tribunals.

Question 8 should refer to “business” rather than “limited company”. The reference to “similar capacity” needs to be explained. If it means activity covered by the licensing regime this should be stated.

Section 2, question 1, asks the wrong question. It should be “Is the business for which a licence is being sought ultimately controlled by a company or organisation based outside the UK?” As it stands for example the question would miss a company owned and based in Poland but which operates only in the UK.

Section 1, question 2, includes information which is not relevant to applying for a licence but rather is relevant to what a company might do when it has got a licence. This should be removed.

Section 2, question 3, is probably unnecessary as if a company is barred from trading it is unlikely to apply for a licence and few companies which have been barred from trading subsequently begin trading again; rather a new company is created.

Section 2, question 5 - there is a need to be aware that the word “provide” is the subject of very lengthy debate.

Section 2, question 6, is inappropriately worded for applications before the offence of operating without a licence comes into effect.

Section 2, question 7, should refer to business not company.

Section 2, question 8 should be removed. It is unnecessary. A situation can change rapidly and if the question remains then labour providers will be obliged to notify the GLA if they start employing or cease employing workers from either the UK or the EU. If the question remains then the reference to EU should be changed to EEA.

Section 2, question 9 should have a qualification such that it allows for the fact that a labour provider may not wish its TLWG audit to be given to the GLA or to be considered. Applicants will not know what a “GLA accredited auditor” is. The question should relate to “a TLWG or other GLA approved audit”.

Question 10 should be reworded “How many years has the business been trading under its current entity?” and the subsequent reference should be to business not company.

Question 11 should be removed as it is of no value. Does “last year” mean 2005 or does it mean the last financial year? Does it mean the average number of workers (ie man years) or the total number even if they worked for only one day? The reference to employees should be to workers, and the labour provider may well not have the information given the likely scope of the Act. Also, the number of workers provided last year may not be a good indication of the current or future size of the business. The ALP has separately argued that labour providers should be asked to apply for a licence in respect of turnover in the coming year rather than the past year.

Section 2, question 12, should similarly be deleted.

Section 2, question 13, should be deleted as unnecessary. There is a legal minimum wage; labour providers know what it is and they will put that figure down. If the intention is to catch people out, it will fail.

The references to other government departments should be expanded to include public bodies, and HMRC and the Home Office should be given their correct titles.

The comment on P90 “Risk assessment will be embedded into associated processes proportionately to the assessed risk of non-compliance occurring” needs translating.

### **Comments on draft statutory instrument**

The comments on draft licence conditions feed through to the statutory instrument but there are also some specific points on the draft statutory instrument that merit comment.

Paragraph 2 is written as if the applicant for a licence is an individual whereas most applications will be from businesses. It needs to be made clear whether the conditions relate to the business or to the principal authority. In 2(1)(a) the reference should be to controlling shareholder.

Paragraph 2(6) requires the applicant to inform the GLA “of the turnover of his business for the last financial year”. For reasons that are explained elsewhere this is likely to be of little relevance in many cases to the size of the business that will be conducted under the licence. At the very least, the reference should be to estimated turnover for business covered by the licensing regime.

Paragraph 2(7) imposes an obligation on labour providers to disclose the results of any TLWG or other audit. This should not be a requirement and will be regarded as changing the goal posts. Rather it should be an option, that is if the labour provider wishes the results of a TLWG audit to be taken into account in determining whether he should be granted a licence and whether he will be eligible for any discount then the full result should be disclosed.

Paragraph 4(1) refers to the fee for an application “for a grant”. The reference should presumably be “for a licence”. Also, it is clear that the fee is actually for the licence not for the application for one.

Paragraph 4(2) states that the annual licence fee is payable by invoice. An invoice cannot pay a licence and in any event this clause seems unnecessary.

The schedule does not allow for much of the information requested in the application process, therefore the GLA would have no authority to seek the information.

Paragraph 1.2 provides for the GLA to be notified of changes in the business address but the application process does not request this.

In the schedule, paragraph 1(4) requires changes to the details submitted with the application form to be notified in writing. There is no reason why they cannot be notified electronically.

Paragraph 1(8) should be removed as it will achieve nothing. This term could be fulfilled by a one line contract: “The two parties agree to do business on terms as they may from time to time orally agree.”

Paragraph 5.2 is unreasonable and impractical. Uniquely labour providers would be required to do all the paperwork before anyone starts work. Even in the best run organisations contracts are completed after work is commenced.

Paragraph 6(2) should refer to “a contract of employment or a contract for services”, and there is also a need to recognise other forms of relationship between worker and labour user.

Paragraph 6(3) duplicates 4(b).

Paragraph 6(4) cannot apply in respect of contracts of services.

The last five words of paragraph 6(4) should be removed, as employees do not have a notice period in respect of particular assignments but rather in respect of their entire employment.

Paragraph 7 seems to have been borrowed from another piece of legislation and assumes the recruitment of an individual worker to fill an individual position.

The reference to “any professional body” needs to be removed from paragraph 7(6) or at the least qualified by reference to “membership of which is a legal requirement to work”. The same point also applies to paragraphs 8(b) and 9 (1)(a).

Paragraph 8 should be amended by the addition of the words “from the worker” as otherwise it may be implied that the labour provider has to obtain confirmation from other parties.

Paragraph 10(1)(a)(ii) should refer to “a contract of employment or a contract for services” and again provision needs to be made for other contractual forms.

Paragraph 10(1)(b)(ii) – the rate agreed with the labour user is irrelevant. The labour user does not normally have a say in the rate paid to the worker.

Paragraph 10(2) is unnecessary bureaucracy and should be removed. This would require, for example, the labour provider to write to the worker telling him the date on which he started a particular assignment (note, not the date he started work for the labour provider).

Paragraph 13 should be deleted. If it replicates existing law it is unnecessary. If it does not there is no reason to apply more stringent requirements to labour providers than to other employers.

Paragraph 13(1) (b) should again qualify the reference to a professional body to limit it to where this is a legal requirement to work.

Paragraph 14(1)(d) should include the word “relevant” after “any” otherwise every labour provider would be obliged to obtain from every worker all details of their experience, training and qualifications regardless of any relevance it may have to the work they are doing. This is not a requirement imposed on any other business.

In paragraph 14(1)(e) the words “the date on which the holder entered the UK” should be removed as this quaint notion that people enter the Country on a certain date never to leave again does not apply in the real world. Drivers from EEA countries can in effect drive on their “foreign” licences in the same way as if they were a UK licence. If the intention of the clause is to deal with drivers from outside the EEA who can only drive for one year then as drafted it can be avoided by simply “entering” the country every year.

Paragraph 15 (1)(g) is out of place; the labour user is not offering terms to the labour provider.

Paragraph 16(b) refers to agreements made under paragraph 12(2). The reference should be to paragraph 11(2).

The purpose of paragraph 17(2) is not clear. Assume, for example, that a licence holder is based in the middle of China but holds the records in London, what is the purpose of requiring the records to be delivered to China in two days? If the purpose is for records to be made available to the GLA, say so.

### **Comments on the partial regulatory impact assessment**

The main assumptions underlying the RIA which can be challenged are the costs of running the GLA and the number of licence holders. The costs issue is dealt with in the separate submission. The RIA is based on the assumption that there will be steady state of 1,000 labour providers seeking licences or licensed. This is simply stated and not explained. It is assumed it is derived from the Precision Prospecting research. This concluded that there are between 500 and 600 “top tier” labour providers. 75% of these (375 - 450) have turnover in the range of £1 million to £7 million and 25% (120 - 144) have turnover in excess of £7 million. About 40 labour providers have turnover in excess of £10 million. In addition,

there are between 1,000 and 2,000 “small and micro labour provider businesses” which supply between 20,000 and 30,000 temporary workers.

The following table summarises the estimates of the number of labour providers.

**Profile of labour provider industry**

Annual turnover	Number of labour providers	Average number of workers supplied a month
£0.09 - £0.17 million	600 -1,200	8
£0.17 - £0.5 million	175 - 350	25
£0.5 - £1.0 million	225 -450	85
£1 - £3 million	250 -300	148
£3 - £7 million	125 - 150	177
£7 - £10 million	85 - 102	727
Over £10 million	35 - 42	727
	1,500 - 2,600	

At first sight it is unlikely that there will be 1,000 labour providers seeking licences given these figures. Very few labour providers with turnover of under £0.17 million would be likely to register as the costs would be excessive. To a lesser extent this also applies to the £0.17 - £0.5 million category.

It is also significant that just 479 labour providers are registered on the TLWG website. 276 have been deregistered for not booking an audit, an indication of the fluidity of the sector and perhaps also an aversion to any form of regulation.

The figure of 1,000 also flies in the face of experience from other new regulatory bodies. The introduction of regulation generally leads to a reduction of businesses in the sector; the issue is by how much. Given that labour providers in the regulated sector have the easy option of becoming labour providers in the substantially larger unregulated sector one would expect a substantial reduction.

The experience of the Security Industry Authority is instructive. Its business plan published in June 2003 allowed for 100,800 door supervisors to be licensed in 2004/05; half way through the following year the number of licences issued is 31,500. The budget also allowed for 25,500 security guards to be licensed by March 2005 and 123,200 by March 2006. Currently, 5,600 licences have been issued.

The initial conclusion must be that the figure of 1,000 GLA licences look very high.

However, this is not particularly relevant to labour providers at least in the first year. If the number of licence holders is below that forecast in the RIA then the effect will be that the GLA will run at a deficit. The GLA is unlikely to be able to reduce its costs in line with the reduction in income and will therefore seek a significant increase in the licence fee for the second year. This is likely to have a further effect of reducing the number of licence holders and so there will be a cycle which will feed on itself. The problem results directly from the decision of the government to impose an onerous regulatory regime on a small sector of a large market.

The following comments are on points of detail within the RIA.

Paragraph 28.2, fourth bullet point incorrectly implies that labour users must take “reasonable steps” to verify that labour providers are licensed. There is no requirement to do this.

Paragraph 28.7 – the reference should be to a “direct effect” not a “direct affect”.

Paragraph 31.2 gives some figures on estimated turnover for labour providers and it is stated that this is turnover of business “conducted in the licensable sectors”. It would be helpful to know precisely what sectors are covered as the licensable sectors have not yet been determined. It is understood that the figures cover the whole of the food industry.

Paragraph 32.3 notes that the appeals regulations RIA assume that 10% of applications will be refused, 50% of those refused would appeal and from these appeals 50% would be successful. In its response to the consultation document on the appeals regulations, the ALP questioned whether there would be many if indeed any appeals. The licence is not a licence to trade but simply a licence to trade in a subsector of the employment business. A labour provider will not apply for a licence if they think they cannot get one. If they are denied a licence they will either address the problems that led to the refusal and reapply or simply operate in another sector or operate illegally in the licensable sector.

Paragraph 33.3 makes a very brave assumption that 75% of applications will be made on-line and it is argued that this assumption will be tested during the consultation period. Indeed, there is a question specifically on this. This is a pointless exercise. Very few labour providers will respond directly to the consultation document and those that do will not be typical of labour providers generally. It would be wise to look at the experience of other regulators in this respect. It is understood for example that one of the problems the Criminal Records Bureau faced was that people did not apply on-line as had been envisaged. It is always unwise for regulators to assume that people will conduct their business in a way most suited to them. It is almost certainly the case that it will be easier for a labour provider to use the telephone option than have to use a combination of the on-line application form and guidance notes.

Paragraph 33.5 refers to the names of those “responsible for authorising contracts with the labour users”. The point is made elsewhere that this is an artificial concept and will cause significant problems in the application process.

Paragraph 33.6 assumes that labour providers with turnover of over £1 million will have an average of 30 names per application and labour providers with less than £1 million turnover will have an average of two names per application. However, in paragraph 33.10 it is suggested that labour providers with less than £1 million turnover will have an average of five names per application. Allowing for the fact that the concept is misguided, these figures demonstrate a misunderstanding of how the business works. The RIA that accompanied the Bill estimated that administration costs account for 5% of the labour providers’ turnover, a figure with which the ALP concurs. This implies £50,000 administration costs in total for a business turning over £1 million. There is no way this is going to accommodate five executive staff with power to strike contracts as well as the person who runs the business.

Paragraph 33.9 states “the labour providers with £1 million turnover a year with an average 30 names to provide”. It estimates the average salary of a person performing this work to be £14.69 an hour. This works out at £25,000 a year. There is therefore the assumption that a labour provider turning over £1 million has staff who agree contracts who cost £770,000 a year. The whole of this analysis is completely misguided.

Paragraph 33.9 assumes that the person completing the application form is earning £14.69 an hour. However, it is a requirement that the person completing much of the application form is the principal authority who will be earning substantially more than £14.69 an hour. Indeed, much of the information can be provided only by the principal authority. No business is going to allow something so fundamental as an application form for a licence to be completed by an administrator. At the very least the chief executive of the organisation would wish to check everything. The cost here is a substantial underestimate.

Paragraph 39.1 makes no mention of Companies House, which would seem to be essential for the checking purpose.

Paragraph 40.8 (and more generally) assumes that the person preparing for the application inspection would be an administrative employee whereas it would be the chief executive in the case of a small business and a more senior person in the case of a larger business. Two hours is a considerable underestimate of the time that will need to be given to the proposed documentation requirements.

Paragraph 43.4 states that when a licence is issued there will be no physical document. It is argued elsewhere that this is inappropriate. A physical document is the easiest means of showing evidence of a licence and, whether or not one exists, labour users will ask for it.

Paragraph 44 states that the cost of a licence should not be so low as to discourage those who might otherwise apply for an audit against the TLWG code to wait for a lower cost application inspection under the GLA regime. In fact what is proposed is a zero cost application inspection. A £250 discount in no way compensates for a £1,500 cost of a TLWG audit. The Association has made the point elsewhere that those labour providers who have not had a TLWG audit should pay for the full cost of their GLA inspection.

Paragraph 45.3 is incorrect in saying that reaction to the Act RIA “indicated the industry could accommodate a licence fee in the region of £585 to £750 a year”. The ALP’s response was “The charge for administering the licence without any auditing of £500 to £750 seems hugely excessive”. The ALP is not aware of anybody who would actually be paying the fee indicating that these sorts of figures could easily be accommodated. No value should be placed on the evidence of those who would not be paying the fee.

Paragraph 46 gives just one option of a banded fee and moreover one that is completely illogical with a nine fold increase in the fee at one threshold point.

Paragraph 46.3 states that the ...RIA figures “did not attract undue adverse reaction during the passage of the Act”. This is technically correct but only because steps were taken to ensure that there would be no reaction to anything during the passage of the Act through Parliament. This cannot then be used as indication of agreement.

Paragraphs 48.3 and 48.4 should allow for those labour providers who will not get licences, as they will have to do all the work as well.

Paragraph 48.6 sets out a range of benefits all of which are already provided for by existing law. It is not immediately clear that simply passing another law will have any effect.

Paragraphs 49.2 and 49.3 refer to those named on the licence. Ignoring the flawed concept they will not have been party to the application and have no relationship with the GLA.

Section 50 deals with the costs of notifying in particular changes to “names” on the licence. If this concept is introduced there will be nothing like 9,000 on the database but rather probably the same number as there are licence holders in that each licence holder would be advised to invent a fictitious position in order to meet this artificial requirement, and there will not be a name given but rather a position.

Paragraph 53 refers to the TLWG code of practice “it is good practice to have a written contract or written service level agreement between labour provider and labour users”. This may be correct but this is no basis for making this a statutory requirement. It takes two parties to have a written contract and there is no legal obligation on labour users to enter into a written contract nor is there any general requirement in law for contracts to be in writing.

Paragraph 54 is a non sequiter. A written contract can consist of one line saying “the labour provider agrees to provide workers to the labour user on terms which will be agreed between them from time to time”. It does not mean that parties are at all clear about rights and responsibilities.

Paragraph 56 states that labour providers will be required to inform labour users of their licence number. This does not seem to be a legal requirement anywhere. The onus is on the labour user to ensure that they use licensed labour providers. The commonsense way of doing this is either to ask to see a copy of the licence or to ask for confirmation that the organisation is licensed and then to verify this against an on-line database.

Paragraph 56.3 states that “the scheme guidance will make it clear what is expected of labour providers and labour users”. No it won't. The legislation does this.

Paragraph 84.8 presents the critical breakdown of income and expenditure. However, this uses different categories from the two previous RIAs and comparisons between them are difficult if not impossible. The ALP has elsewhere made a detailed commentary on the financial figures. The ones that stand out in this table are -

- The increase in operations (non-frontline costs) from £269,000 in year one to £458,000 in year two. This needs to be explained.
- Very high figures for corporate service of £312,000 in year one to £319,000 in year two.
- IT support costs of £225,000 in year one and £235,000 in year two.

Paragraph 85.1 states that initial discussions with small businesses have indicated that labour providers are broadly content with the proposed structure for the licensing scheme. The Association is not aware of what these discussions were, and the details of the scheme have become available only in the consultation document.

### **Consultation questions**

The consultation document contains 25 specific consultation questions (seven of which are not numbered). The Association considers that these generally do not ask the right or most important questions, hence the more detailed response to the consultation exercise. Some of the questions are more in the way of market research and should not be asked at all. However, to assist in an analysis of consultation responses and for ease of reference, the Association provides below answers to the 25 questions.

1. Do you agree that all those responsible for authorising contracts should be named on the licence?

No. The concept is artificial and is designed to meet some unfortunate wording in the Act. Contracts are agreed between a labour user and a business not an individual. The concept will cause unnecessary complications and costs throughout the licensing process, and should be removed.

2. Do you agree with the definition of “fit and proper”?

The definition of “fit and proper” appears to be somebody approved by the GLA so the question is somewhat circular. Generally, the accompanying commentary is satisfactory.

3. The GLA is proposing to accept applications on-line and by phone. Which method would you prefer to you?

The question is not part of the consultation exercise but rather is designed to be market research to give an indication to the GLA of the proportion of applications that will be made by post and on-line. It will be ineffective in this respect because few labour providers will reply to the consultation exercise and those that do will be far from typical.

3(a). Is the guidance clear and easy to understand?

The guidance is generally clear and easy to understand except for the concept of individuals named on licences, as this is artificial.

3(b). Do the application questions cover everything you would expect?

The questions cover everything one would expect and quite a bit more.

3(c). Do the guidance and application questions place any unnecessary burdens on you?

There are a number of unnecessary questions detailed in the response to the consultation document which should be removed and which would therefore reduce unnecessary burdens.

4. Should checks on labour providers be carried out for involvement in illegal activity?

Yes.

5. Do you think that an assessment of criminality should be made of all those named on the licence?

An assessment of criminality should be made in respect of the principal authority and the directors of partners of the business together with any other ultimate controllers. The concept of persons named on the licence should be removed.

6. Do you agree to the proposal to carry out risk assessments on labour providers?

There is no such proposal. Initially, every labour provider will be inspected in order to obtain a licence. Any subsequent applications will be from newly established businesses for which a risk assessment based on existing businesses will be irrelevant.

7. Which fee level do you agree with?

Only one level is given and it is unacceptably high.

7(a). Do you agree with using size of turnover for determining the band categories?

Yes but only in a logical way with a smooth scale and based on business going forward not backward.

7(b). Do you have any recommendations on how to mitigate the fee levels?

Yes –

- Reduce the costs of the GLA to a level appropriate for the business it is undertaking.
- Provide a subsidy through Defra recognising that the Act is targeted at only a small part of a large industry.
- Request contributions from other stakeholders that are represented on the GLA and which have played a part in determining the Act and the licence conditions.
- Charge for application inspections.

7(c). Would you prefer your licence to be a paper or virtual licence?

There should be a paper licence but the information on the paper licence should be replicated on the list of licensed labour providers on the GLA website.

7(d). Should annual licence renewals be an automatic process?

Yes.

8. Did the GLA licensing standards cover all the areas that you would expect?

They cover far too wide an area including matters such as confidentiality where there is no evidence of any abuse and no reason why the small group of businesses subject to this Act should be subjected to any different regime from businesses generally.

9. Are the licensing standards clear and easy to understand?

Generally, yes, but subject to the detailed points made in this response. Also the point the REC makes about the distinction between contracts for services and contracts of employment is endorsed.

10. Should the GLA charge labour providers for updates to those named on the licence?

The concept of naming people on the licence is artificial and should be abandoned. It would add insult to injury for the GLA to charge people for implementing an artificial requirement.

11. Do you agree that there should be a requirement for a written contract between labour providers and labour users?

No. This is undoubtedly good practice but it takes two to enter into a written contract. The provision would also be ineffective because a written contract could consist of a single line, such as “The labour provider agrees to provide workers to the labour user on terms that may be agreed orally between the two parties from time and time”.

12. Do you consider that licence holders will be able to meet the conditions in the Gangmasters (Licensing Conditions) Rules?

Not unless there is some allowance for occasional errors in documentation that apply in even the best run of businesses. In some respects, the licence conditions take an absolute approach such that any failure in documentation will result in a non-compliance, two of which mean that the inspection will be failed. The REC point on the practicality of some of the conduct of business regulations is endorsed.

13. Do you agree with the proposed coverage of the licensing standards?

There are too wide for the reasons already given.

14. Do you agree with the proposed categories for non-compliance in the licensing standards?

There is nothing wrong with the categories but the weights and points assigned to them are unreasonable. Given that the licence conditions for the most part refer to process rather than substance (that is having documentary evidence rather than actually doing something unlawful), it is likely that many labour providers will fail the inspection. This follows the normal pattern of any regulatory system, despite whatever its architects say, eventually concentrating on process rather than substance. There needs to be a substantial rethink on this point.

15. Do you agree with the GLA’s approach to setting additional licensing conditions?

No. A formal licence condition seems an unnecessarily bureaucratic way of dealing with minor problems, which a labour provider should simply be asked to address before the inspection is considered to be complete.

16. Do you agree with the proposed proportionate approach to scoring compliance?

The approach is not proportionate but mechanical. The attempt to provide proportionality is through allowing labour providers to have one critical non-compliance without failing the inspection. This is not a proportionate approach. That would require each licence condition to be assessed in a proportionate way.

17. If compliance enforcement officers are based in other locations away from the GLA main office in Nottingham, which areas of the Country should they be based in?

This is not a proper question to ask labour providers. However, as a general rule it is best to centralise such operations as they should be intelligence driven and there should be a need to share information between those involved in enforcement activities and also to share with other government agencies.

18. Do you agree with the assumptions and estimated costs and benefits in the partial regulatory impact assessment? If you don't agree, what do you think the assumptions, costs and benefits should be?

The assumption on the number of licence holders is highly questionable. The figure for the GLA budget is questionable but it is not put as an assumption but rather as a fact.

### **Follow up work**

It is normal practice that where the consultation leads to a considerable change in proposals then there is a second consultation. It is clear that this test is met in this consultation as a new version of the draft licence conditions, which is materially different from the version in the public consultation document, has now been issued. This response also demonstrates the need for substantial changes to the GLA's proposals.

The practice of having a second consultation has been followed by Defra in respect of the Exclusion Regulations, and also the Appeals Regulations where those who responded to the first consultation (admittedly a select few) were sent a copy of the revised regulations and invited to comment.

Clearly there is not time for a full scale consultation but at a minimum stakeholders should be sent the proposed draft licence conditions, revised fee proposals and statutory instrument and given, say, two weeks in which to comment. This should not delay the introduction of the regulations.

There is one issue that is not covered in the consultation document but which is important to labour providers, that is the timing of the issue of licences. It is understood that the intention is that as soon as an organisation has been approved for a licence it will be listed on the GLA website, and that furthermore the GLA intends to invite a select band of labour providers to apply early so that it can have a number of licensed labour providers by the 1 April date when it will formally invite applications.

If this is the case it will be confusing to businesses and of doubtful value all round. Already there is considerable ignorance about the legislation. Over the last year labour providers have not infrequently been told by potential customers that they are expected to "have a gangmaster licence". If the GLA goes ahead with publishing names as soon as they give a licence then this might allow some organisations to have an unfair marketing advantage over others with a risk that they could misrepresent the position that somehow they are more reputable organisations than those that have not yet received a licence.

Whatever happens, the GLA must be even handed. If it is going to publish names as soon as labour providers are given a licence then it needs to set out the criteria on which it will consider applications and ensure that each is considered on exactly equal terms so that there

is no element of chance as to when a name goes on the list of licensees. This would seem to be an unnecessary complication for the GLA.

It is understood that there are significant financial implications here. Presumably if the licence is granted from a certain date then the fee is deemed to run to the same date the following year, whereas if the licence is deemed to run from, say, 1 September, the date on which it will become an offence to operate without a licence, then renewals would not occur until 1 September 2007.

There are two options. The first is for no list to be published until the offence of operating without a licence comes into effect, currently assumed to be 1 September. This will ensure an even handed approach and will reduce any confusion in the market place.

The second option is a two tier approach with the GLA indicating up front that it will publish its first list on, say, 1 August and that if an organisation wishes to appear on the initial list then it must get its licence application in by, say, 1 May. This would help the GLA manage its workload by preventing a last minute rush and would be even handed between labour providers. It would also give the GLA a three month period in which to consider licence applications.

# Appendix

## Comments on GLA Licensing Standards, Version 8.6

### Introduction

A revised version (8.6) of the licensing standards, dated 3 November, which differs in material respects from the version published in the public consultation document, has been made available to GLA Board members. The GLA has indicated that it would welcome comments on this version. This paper comments on the new paper. Comments on the previous version, which is the subject of the formal consultation exercise, remain valid.

### Executive summary

The new paper is a considerable improvement on the earlier version, but the standards remain unreasonable in a number of respects.

The standards fail to take a proportionate approach with errors in documentation being capable of resulting in a complete failure of the inspection.

The “reportable” category should be removed as it merely confuses and serves no useful purpose. The “correctable” and “reportable” categories should be merged and renamed “minor”.

In areas covered by legislation, the licensing standards should not attempt to impose a higher standard than that required by law.

Allowance must be made in all the licensing standards for occasional errors.

### Introduction to the consultation document

It is stated that in general the GLA regime will result in a clear pass or fail with only a very few specific instances allowing referral pending remedial action. On the contrary, this should be a normal tool to be used by the GLA. Where relatively minor errors are discovered during the course of an inspection then the labour provider should be allowed to remedy them before the final decision on an application is taken.

The final sentence of the introduction states that “application of the licensing conditions will be aimed at identifying the more persistent exploitation of workers rather than concentrating on the isolated occurrence of non-compliance.” This is fully supported. However, there are many examples in the draft licence conditions where an isolated occurrence of non-compliance could contribute to a fail.

### Offences

It is stated incorrectly that there are penalties for a labour user “knowingly” employing an unlicensed labour provider. This is not correct. The section 13 offences apply regardless of whether the labour user was knowingly employing an unlicensed labour provider. Defences are available where a labour user took reasonable steps, but there is no defence where the labour user simply did not know about the law. The penalty is also incorrectly stated. The penalty is “up to” 51 weeks imprisonment and/or a fine.

### **GLA mission statement**

This might seem peripheral but, as drafted, the statement gives a misleading impression as it implies that the GLA will be able to take action against those who operate outside the law. It should be made clear that the only action that can be taken is in respect of withdrawing or suspending a licence. The GLA has no power to enforce other laws.

### **Categories of non-compliance**

Four categories of non-compliance are used: critical, major, reportable and correctable. It would seem preferable to use normal English expressions. Use of the word correctable implies that others are not correctable, and similarly the use of the word reportable implies that others are not reportable. In fact, critical and major non-compliances are all reportable and most are also correctable. Correctable is in fact used to mean minor but it would be better to use the word minor as was done in the TLWG code. The “reportable” category should be removed. Contrary to what is said in the paper there are no cases in the licensing conditions where conditions are both major or critical and reportable. Rather, reportable is used as a category some way above minor. With one or two exceptions the items listed as reportable should be reclassified with the correctable items and the scoring system adjusted accordingly.

The section on effects of refusal etc refers to a situation where the labour provider should “cease trading immediately”. It needs to be made clear that the reference should be to cease trading only in the licensable sectors. The labour provider is free to provide labour in other sectors and to continue trading generally.

### **Reporting non-compliances to other relevant bodies**

While what is stated in this section is reasonable it does not follow through in the detailed licence conditions. For example, the GLA intends to report to VOSA that a labour provider does not have records of the date on which holders of driving licences entered the UK. As this is not an offence it is difficult to see what purpose there is in reporting it to VOSA. Similarly, the GLA is going to report to somebody (who?) that workers do not have proper access to food. Again, this is not a legal requirement so the purpose of the threat is not clear. The GLA will also report to local education authorities cases where there is no parental consent to the employment of workers under the school leaving age. This legal requirement has fallen into disuse and local authorities would simply be baffled if such reports were made to them. They have more important things to deal with.

This point is usefully exemplified by an interview given by the Information Commission to the Financial Times on 22 November. He said that investigations and regulatory action would be focused on cases where failure to comply resulted in “serious consequences”, and that less time would be devoted to minor or technical breaches of the law. Criteria for taking action could include career threatening harm, deliberate, wilful or cavalier conduct or where there was a need to set an example or to clarify the law. For the GLA to report technical breaches of the law on data protection to the Information Commissioner would rightly be regarded as a waste of the time of the Information Commissioner and would serve no useful purpose as no action would be taken as a result. It is difficult to envisage what breach of data protection laws a labour provider could commit such as to merit regulatory action by the Information Commissioner.

These points confirm the need to remove the “reportable” category but instead to make a general comment such as that made in section 7.

## **Licensing standards**

### **1. Possession of a GLA licence**

The arguments here appear circular and probably unnecessary. 1.1 means that if a labour provider is trading without a licence then once licensing starts it will be unable to obtain a licence because it is a critical failure not to have one.

The definition of fit and proper is someone who meets the requirements of the licensing conditions. It is stated that individuals or organisations “must not have been subject the (sic) relevant convictions for offences connected to labour provider activities covered by the licensing standards”. This shows no evidence of proportionality. For example, a number of labour providers have been convicted of offences in respect of public service vehicles, an area where the law has been and remains far from clear. There is a need for proportionality here.

There is confusion in this section between “details of the licence” (also referred to as “details on the licence”) and information supplied on an application form. Presumably the GLA wants to know about information supplied on the application form rather than the subset of information that will be on the licence. As drafted, the paper envisages that convictions will be recorded on the licence.

### **2. Payment of wages, tax, NI etc**

The comment should refer in the third line to “employers’ and employees’ NI contributions”.

It is difficult to see why registration for income tax is regarded as a major issue whereas registration for VAT is merely regarded as reportable. 2.1.3 should be recorded as a major not a reportable item.

2.2.2 should allow for proportionate approach in the way that 2.1.2 does. There are bound to be cases where workers have simply not got round to giving written consent.

2.4 needs to adopt a proportionate approach in the same way that 2.3 has done. It would also be preferable to refer to holiday pay rather than “paid annual leave entitlement”, as payment in lieu of holiday is acceptable. Also, the difference between employees and workers needs to be recognised.

2.5 again needs to allow for proportionate approach on the lines of 2.3.

### **3. Debt bondage etc**

3.2 does not allow an employer to charge interest on loans to workers. Is this a legal requirement? If not, then it should be amended.

3.3.2 should allow for the special position of SAWS workers who are not allowed to leave their employment. More generally, is this provision intended to allow workers to break the terms of their contracts?

3.4 needs to allow for a proportionate approach, by inserting “systematically” before “required”.

3.5 “there is evidence of equal ops procedures” is meaningless as it stands. The reference should be to not discriminating unlawfully.

3.5.4 is an impossible test. Many workers, including those whose first language is English, are unaware of disciplinary and complaints procedures and equal opportunities procedures because they not regarded as relevant. The requirement should be that workers are given the necessary information in a form that can be understood, not that they actually understand or are aware of them.

3.6 should be removed in its entirety. It is difficult to see how disclosing information relating to a worker without the prior consent of the worker can come under the heading of “debt bondage, harsh treatment or intimidation of workers”. There is no evidence of abuse by labour providers on this matter and no reason why the GLA should become involved in it. See also the earlier references to the Information Commissioner’s comments.

#### **4. Workers’ accommodation**

The comment refers to accommodation “provided or arranged by the labour provider”. This is not correct. A labour provider can be held accountable only for accommodation that he provides.

4.3 should be removed. It is covered properly by 4.4, which relates to a legal requirement. It would be unreasonable for worker interviews, which inevitably are subjective and may not be verifiable, to result in a labour provider not obtaining a licence or losing a licence on the basis of a subjective judgment as to whether bedding is appropriate. Also the labour provider can be held accountable only for things that they control. If a property is overcrowded because the workers choose to sublet, that is a matter for them not the labour provider.

#### **5. Hours worked etc**

5.1 and 5.2 again need to allow for a proportionate approach. For example, 5.2 should read “there is evidence of arrangements in place to ensure that workers working in excess of 48 hours a week freely sign an opt out”.

#### **6. Breaches in health and safety including training**

This section needs major surgery. A labour provider cannot be held responsible for what happens on the premises of a labour user unless the labour provider is conspiring with the labour user or has good reason to believe that conditions are unsafe. As drafted, an inspection of labour user premises, over which the labour provider has no control, can lead to a labour provider losing his licence while the labour user happily continues as before.

Specifically, 6.1.2 should be amended to read “the labour provider has taken steps to ensure that health and safety risks to workers, while they are under his control, are properly controlled.”

6.3.1 should similarly refer circumstances where the labour provider is responsible.

6.3.2 – 4 can all be removed.

6.3.3 should refer to workplace specific training.

6.4.1 goes too far as it stands. A driver may have a licence that has fallen out of date. This should not be regarded as a critical matter that would result in a licence being lost.

6.4.4 should take out the reference to “the holder entered the UK”, or at least this should be confined to workers who do not have the right to work in the UK. The concept is irrelevant for EU nationals who are free to come to Britain as they like. For all practical purposes, an EEA licence is equivalent to a UK licence.

6.4.5 incorrectly states that the criterion for a PSV vehicle is that it has eight seats. It is actually nine or more passenger seats. As the law on this is not wholly settled it would be sensible to add the qualification that if the vehicles are being used for hire and reward PSV licences and PCV entitlement is required.

## **7. Recruitment and contractual arrangements**

The comment should be limited to where recruitment is in the UK as recruitment in other countries is governed by the law of those countries.

7.1.1/2 refer to employees rather than workers.

7.1.2 should refer to unlawful discrimination. Employers are entitled to discriminate on grounds such as experience, qualifications and aptitude.

7.1.3 should qualify the reference to any professional body to circumstances where this is a legal requirement. Professional bodies have all sorts of requirements but unless these are also required by law they are of no relevance.

7.2.1 requires workers engaged under contracts for services to have copies of the contracts before work commences. This is a requirement under the Employment Agencies Act regulations but it is not possible, is not generally observed and is not enforced. A proportionate approach must be shown here. There is no abuse of workers if they receive their contract two weeks after they start.

7.2.2. is unnecessary as it duplicates 7.2.1.

## **8. Subcontracting**

The words “properly and currently” are unnecessary in 8.1, and this also needs to be qualified by referring to inspections after the requirement to have a licence comes into effect. It cannot be applied to initial licence applications.

## **9. Identity issues and under age working**

9.1 should be amended to read “illegal workers are not employed”. It is not a legal requirement to have photocopies of documents. This may be good practice but the licence conditions should be confined to legal requirements.

Similarly, 9.1.2 should be amended to refer to “grounds for entitlement to work in the UK”. 9.1.1 and 9.1.2 can usefully be combined.

9.1.3 can be removed as it duplicates 5.1.

9.2.4 should be removed as this legal requirement has fallen into disuse. (The BRTF study showed that fewer than 10% of child workers have parental and local authority consent and some local authorities would probably not know to go about giving such consent.)

9.2.5 can be removed as this is already covered by 5.1.

### **10. Legality and rights of workers**

10.1.1 can be removed as it duplicates 9.1 and incorrectly states that section 8 requires copies of supporting documents. Also, it is unwise to refer to specific enactments; section 8 is due to be replaced by Clause 15 of the Asylum and Nationality bill.

### **Appendix 1**

The comment refers to “the Act” but the Act makes no such requirement.

The final point in paragraph 3 requires that documents must be capable of being delivered to the licence holder’s premises within two working days. The premises may be in the middle of China. It is difficult to see what purpose is served by this. If the intention is that the records must be made available to the GLA, this should be said.

### **Examples**

The second point leaves out the reference to “critical”.

It is relevant to note that most of the examples are to do with documentation not substance.