

# *GLA licensing, an initial analysis*

13 July 2006

*A Note prepared by the ALP*

## **Introduction**

Labour providers have been able to seek licences with effect from 6 April. Some 600 have applied for licences with perhaps one third that number having received their licences. This paper provides a tentative analysis of the progress of licensing and its impact.

## **The licensing process**

Labour providers report few problems with the licensing process. It seems to have gone smoothly. Most of the issues that have been raised concern non-compliances identified in TLWG audits.

## **Numbers**

There are two sources of information on the numbers of businesses seeking licences and the number actually licensed – information given from time to time by GLA officials and the numbers on the website; the latter figures are lower than the former, indicating a lag between a business applying and its details being put on the website. This is because the GLA does not put the name on the website until cleared funds are received.

GLA officials have indicated that by the end of June 547 businesses had applied for licences and 275 had been granted licences. Of the applications 69% had had TLWG audits.

The website shows that 497 labour providers have applied for licences as at 13 July. The figure was 298 on 15 May and 405 on 15 June and 483 at the end of June.

The current figure seems in line with the central estimate of 1,000. It can be expected that applications will tail off until mid August when there will be a last minute surge running up to the end of September. The GLA message that applications must be made by the end of August in order to ensure that they can be processed in time seems to have got through only to those who know about licensing. There are many labour providers that do not yet know that they need licences. There has been no significant communications campaign to get to them and it is difficult to see what sort of campaign would be effective.

The ALP's analysis of the first 446 labour providers to be recorded on the website is attached at Appendix 1. The main conclusion from this is that the businesses seeking licences are predominantly those that serve the food packing and processing industries, ie the same group as was targeted by the TLWG initiative. Few field gangs or employment agencies seem to have applied. The regional analysis shows that just seven labour providers have applied to be licensed in London. This must be a small fraction of the number that should be seeking licences. No labour providers at all have applied from Bristol and Avon or Cumberland, and just six have applied from Wales. However, it should be noted that labour providers can and do operate in areas other than where their head office is located.

## **The impact of licensing - theoretical analysis**

The provision of contract labour to the food and other industries lends itself to malpractice. By far the most important malpractice is tax evasion. Those who evade tax have a cost advantage over others of up to 40%. They can put reputable businesses out of business or force them to evade tax as well in order to stay in business. Many labour users outsource labour supply as a means of enjoying some of the benefits of tax evasion through lower costs but without running any of the legal risks. It has been

easy to get away with tax evasion in the industry. Very small businesses can operate completely outside the formal economy. Larger operators may run a good business with immaculate records alongside a business operating on a cash basis. The tax authorities have been unable to tackle the sort of tax evasion. They are better equipped to go through detailed records and find evidence of failure to pay the correct amount of tax rather than to discover and analyse businesses that have no records to inspect or records for only part of their business.

Partly to deal with this issue the TLWG code of practice and other pressures, in particular from the supermarkets, have led some but not all labour users to apply appropriate due diligence in their selection and management of labour providers, ensuring that tax and National Insurance are paid appropriately. The necessary add-on to the legal minimum wage in order for this to be done is generally accepted to be around 30% where transport is provided. It follows, for example, that any labour provider offering to work for under about £6.50 an hour for anything other than a small part of their business is probably evading tax somewhere along the line. This is most commonly done by not giving holiday pay. Beyond this is straightforward evasion of income tax, national insurance contributions and VAT. This is typically by part of a business rather than the whole of it.

There is a risk that with licensing labour users can simply say that they are entitled to expect that if an organisation has been licensed then it has been thoroughly checked by the government and is operating above board, and even if the rate it is offering seems unreasonably low if this is good enough for the government that is good enough for them. Legally, a labour user commits no offence if they are using a labour provider who is evading tax.

There is therefore the possibility that with the introduction of the licensing regime the due diligence by labour users will actually reduce and that if the crooks are able to get licensed then they will be in a more powerful position. This phenomenon is not unique to labour providers; it is generally recognised by regulators who accept that they have a responsibility to ensure that this does not happen by having an appropriate regulatory regime in place. For the GLA this is exceptionally difficult as its powers are largely confined to the offence of not having a licence. It is questionable if the Act will enable the GLA and HMRC, acting together, to be able to detect and deal with tax evasion more effectively than the tax authorities have been able to do in the past.

## Testing the impact on the market

The appropriate test in the marketplace is whether the introduction of licensing has reduced due diligence by labour users and increased competition from labour providers offering rates that are not viable. This cannot easily be tested by normal research methods, although it should be possible to employ suitably qualified consultants to make an initial assessment including through talking with people operating in the marketplace and some "mystery shopping".

Members of the ALP Executive Committee and a few consultants operating in the marketplace have been asked for their initial assessment of the impact of licensing. Their responses are set out, almost verbatim, below. It must be stressed that these are off the cuff responses, generally not backed up by hard evidence. However, taken collectively they are an indication of what might be happening in the marketplace.

### *Consultant*

"I do not believe that the GLA at the moment is having the positive effect we all hoped. Very dubious labour providers have been licensed, still quite a few sizeable Packhouses are paying less than £6.50 which questions the viability of the provider and farmers for the most part continue as if nothing had happened. Some rates are still under £6.00.

I appreciate it is early days. I want the Authority to be effective. I do appreciate that licences can and will be revoked, but to issue a licence in the first place sends out bad signals.

When half the 'gangmasters' in the UK were pocketing government funds with impunity, neither customs nor the revenue, despite all their resource and it must be said some excellent officers, were

able to do little but scratch the surface over many, many years. However good the staff of the GLA they will struggle to succeed where others have failed- albeit with extra statutory powers.

#### *Labour provider*

Some of the large national agencies since they have obtained their licences have taken the view that if they undercut other agencies in the next few months then when the new minimum wage comes in in October some agencies will not survive and they will therefore be able to renegotiate rates with little competition. We have come up against this ourselves. For example a rate of £6.38 was offered for all hours including overtime payments to staff. It has become a little bit of a Dutch auction with the lowest quote getting the contract. Some large companies can survive making losses for longer periods with the ultimate aim to push out the competition and in the end obtain better rates the few who survive.

#### *Labour provider*

We have not noticed any change in the way Labour Users are getting their temporary staff. Mainly this is due to the poor weather that we have experienced to date and orders have been between 30/40% lower as a result.

We do not expect to see any significant changes until after October 1st 2006 and the legislation finally kicks in.

It is still our impression that the Multi-Nationals are pushing down prices from their suppliers and it will be interesting to see how many survive with costs moving ever upwards as their profits continue to drop!!

We have not heard in our area any Labour User employing workers "for cash" basis but if it is kept quiet why would we!!!

#### *Consultant*

My first impressions so far have been mixed, I have seen a few labour providers move out of the sector and in to Construction, others have applied for a licence as a new business when in fact they have been trading for a long time, I presume this is so the audit cannot cover what has happened in the past.

Only one of my clients has asked about licensing, and none have received any information from the Supermarkets. I had a discussion about rates with one client using the break down given and they said we can all make figures say what we like but at the end of the day the margins are not there for them they cannot continue to pay higher labour rates.

#### *Labour provider (in Boston)*

Things have got worse since licences have been issued. Companies not paying tax or National Insurance have been licensed. They know how to get themselves through an audit. Rates generally are going down. Some smaller agencies are going out of the market.

#### *David Camp, Consultant*

So far it is a mixed bag. I do believe generally that the TLWG and GLA processes have made a significant improvement to the working standards of a large group of temporary workers.

I have seen improvements in "paper" compliance in largely irrelevant areas such as "48 hour per week opt outs" and data protection – generally what might be referred to as tick box areas. I have also seen "paper" improvements to health & safety processes but until LP's and workers are paid for basic training by LU's this will never significantly improve.

There has been an improvement in the provision of basic legal contractual terms to workers. I was surprised at the general level of ignorance of worker entitlements amongst labour users and providers

– ignorance being the case rather than deliberate evasion. Holiday pay evasion – worth 42p per hour on the minimum wage is the way most commonly used to be able to charge £6 hour.

The TLWG and GLA processes have provided a framework against which labour users, if they wish, can audit LP's and this has resulted in improvements.

LU's continue to use piece rates to pay below the minimum wage and do not or choose not to understand the legislation in these areas.

Of course those LU's and LP's who most abuse labour are those who deliberately choose to work outside the law and they will have no intention of applying for a licence– this is just another piece of legislation to evade. The measure of success of the GLA on this will depend on its ability to target these groups and to rally the powers of enforcement.

These views are not all saying exactly the same thing and it would be surprising if they were. However, not one has given any indication that those who evade tax are being driven out of the market by licensing or that the position has improved for those seeking to operate within the law.

## **Some thoughts for the GLA**

The ALP has consistently made the point that the major problem facing labour providers is the inability to get rates from labour users that allow them to meet all legal requirements. This is because a significant number of labour providers are evading tax, the only means of significantly reducing costs.

The ALP has been concerned that licensing would lead to labour users reducing their due diligence. With the full support of Marks & Spencer it devised a checklist which Marks & Spencer has sent to all of its suppliers and which also has been sent to other retailers. A copy of this is attached at Appendix 2. However, unless it is enforced it will be of little value. Encouragingly, some labour users, having received a copy of it, have phoned to discuss the analysis and seem generally to accept what it says.

It is understandable that initially the GLA will be concentrating on licensing. However, it is important that as quickly as possible work is done by the GLA and HMRC, separately or together, which deals with the tax evasion issue. The checklist can usefully be used for this purpose. Is it possible for the GLA to ask labour providers the details of all of the rates that they are currently charging and to pursue those who seem to be charging unreasonably low rates? HMRC should be investigating labour user businesses that are known to pay unrealistically low rates and pursuing the labour providers who supply them.

A second more general issue is that there is a need for an effective feedback mechanism on the impact of licensing. The GLA board cannot perform this function as it largely comprises people who are neither labour users nor labour providers. This paper is the first such analysis; there is a need for more regular and more detailed analyses.

## **Appendix 1**

### **Analysis of GLA licence applications**

#### **Introduction**

This note briefly analyses the 446 licence applications details of which were on the GLA website at the end of June 2006. The analysis has been prepared for two purposes –

- As an input to the ALP response to the Defra consultation on the reasonable steps a labour user should take to ensure that he is dealing with a licensed labour provider.

- To provide information to labour providers and other interested parties on the nature of the organisations seeking licences.

## Methodology

The main part of this paper comprises an analysis of 446 labour providers whose details were available on the GLA website on 28 and 29 June 2006. No distinction is made between those labour providers that have been licensed and those that have applied; it is assumed that any such distinction would be irrelevant to the purposes of this analysis.

The analysis is somewhat rough and ready and there are probably some errors, but the general conclusions hold good. The analysis has thrown up a number of issues relevant to licensing which are summarised at the end of the paper.

A second part of the paper summarises some information given separately by the GLA to the Temporary Labour Working Group.

## Names

Of the 446 labour providers only two had the word “gangmaster” in their names.

## Location of applicants

This analysis is not easy as the counties used are the postal counties rather than geographic counties. Middlesex, which no longer exists, has labour providers while some of those in Worcestershire are counted as being in the West Midlands. Also, there is a discrepancy of about 20 labour providers between the number recorded as being in England and the numbers recorded by looking at the individual county figures. The country breakdown is –

England	411
Scotland	20
Wales	6
Northern Ireland	9
UK	446

Within England the counties with the most number of labour providers were –

Lincolnshire	77
Cambridgeshire	36

West Midlands	21
Norfolk	20
Kent	19

What is perhaps more significant is the very small number of labour providers in some counties. Bristol and Avon, Cumberland, Humberside, Huntingdon, the Isle of Wight, Northumberland, and Rutland between them had no labour providers. London had only seven labour providers. Only six labour providers from Wales have sought licences. At first sight some of these figures seem implausibly low. However, some labour providers operate nationally and other operate in areas away from their head offices.

## Sectors

The application form asks labour providers to indicate "the industry sectors you supply with workers". The figures are shown below –

Agriculture	195	(44%)
Horticulture	150	(34%)
Food packaging	360	(81%)
Food processing	294	(66%)

As is clear from the figures most labour providers operate in more than one sector. However, it may well be the case that a number of labour providers put down not only the sectors in which they are currently operating but also those in which they may wish to operate at some time in the future.

Some points from the sectoral breakdown –

- 34% of labour providers supplying agriculture supplied that sector only whereas for packaging the proportion was 10%, processing 5% and horticulture just 2%.
- 84% of labour providers in the processing industry were also in the packing industry and 75% of those of the packaging industry were also in the processing industry. This confirms that would not have been sensible to treat processing and packaging separately in the legislation.

## Business organisation

Of the 446 applicants 358 (80%) were companies 59 (13%) were sole traders and 29 (7%) were partnerships. Most of the sole traders were in the agriculture business.

## Persons named on the licence

The legislation requires corporate bodies to operate through people named or otherwise specified on the licence. This is a difficult and unusual concept which has caused considerable problems. The specific question asked on the application form is: "For the regulated sectors, please state the name,

date of birth and business phone number for anybody within the organisation who is authorised by you to negotiate with and supply workers to customers. All of the people named must be direct employees of the business and not subcontractors.” The guidance notes have an additional qualification “If your organisation does not have employees who fulfil this role (i.e. it is only you, the directors or partners who can do so) please go to section E”.

Labour providers have the option of specifying job titles, something which was thought to be most appropriate to the larger ones.

In other words, the people named should not be directors and also the GLA was not expecting the principal authority (who in any event is likely to be a director) to be named. The wording in the application form and the guidance has reasonably led many labour providers that are companies not to name any people on the grounds that no one other than the principal authority or other directors were authorised to negotiate contracts. The GLA has accepted this as nearly half of companies that have been registered have no additional names. However, the Defra consultation paper on the reasonable steps a labour user must take to ensure that he is dealing with a licensed organisation requires the labour user to verify that the person they are dealing with is named or otherwise specified on the licence. As the ALP has already pointed out the application form, the guidance notes and the legislation are inconsistent, and there is now a further inconsistency in the Defra consultation paper.

The following table shows the approach to naming people adopted by the 358 companies whose details have been analysed –

one name	72
two names	33
three names	30
four names	13
five names	10
six names	9
seven names	1
eight names	4
9 - 19 names	7
22 names	1
27 names	1

Positions 13

Total 358

46% of companies recorded no additional aims. However, it is worth noting that 9 labour providers listed the principal authority as a name either on his or her own or as one of the number. Of the 13 labour providers that opted to give positions, one named one position (managing director) and three others named between two and three positions. The other numbers of position as were 6, 10, 15, 23, 24, 28, 103, 140, and 1,195. The company with 1,195 positions is Adecco - 20 account managers 350 branch managers, 800 recruitment consultants and 25 regional managers.

### The GLA website

This section notes points about the GLA website which the GLA might like to consider to help labour providers, labour users and other interested parties obtain the information that they need –

- The names of companies are not recorded alphabetically under each letter; and a number of labour providers are listed in the Ms because the business name is, for example, Mr S. Sparrow or Mrs Pauline Price.
- Some names are in block capitals for no apparent reason.
- The search facility needs to catch the trading name of the business as well as the business name. However, at present only the business name is captured. This makes it impossible for some labour users to ascertain whether a labour provider is licensed, or rather they will get the impression that a labour provider is not licensed when in fact it is. For example, a labour user seeking to deal with a company trading as A14 Vehicle Hire will not be able to find it through the search facility. This is the trading name of Manjinder Kaur. The short-term work around would be to follow what has been done in respect of K2, the trading name of which is also listed in the business name, ie Tuckwitts Tea + Toast LTD/TA/K2 Recruitment (Cambs).
- It is impossible to print or to save the detailed entry for each company even though a labour user will be required to do this to comply with some of the proposals in the reasonable steps consultation paper. [The GLA website has subsequently been amended so that entries can be printed, but still not saved.]
- Similarly, it is impossible to print off a complete list of applicants.

More generally, it would be helpful if the GLA could regularly, perhaps weekly, publish analyses of applications along the lines of this paper. The information should be available at the push of a button whereas it has had to be manually recovered from the GLA website to the purpose of this analysis.

### Additional information from the GLA

Some additional information on applications to the GLA is available from a presentation given by a GLA executive to the Temporary Labour Working Group on 26 June 2006.

An interesting feature of the GLA approach has been the recognition of audits carried out by the TLWG. The audit reports have been examined against the GLA licence standards and scored accordingly. Where the score is less than the cut-off point of 30 the audit is classed as successful. Where it is over 30 then a verification visit has been required.

The GLA received the results of 462 TLWG audits. 227 (49%) scored under 30 and were regarded as successful. 185 (40%) required a further visit. Of the remaining 35, 22 have so far been classed as failed because of a major change of circumstances or failure to contact. Post verification, 427 labour providers (92%) were classed as successful. There is a close relationship between those labour providers and the 456 listed on the GLA website.

It was indicated that 547 applications had been received, of which clearly 100 have yet to be recorded on the GLA website. 275 licences have been issued. Of the applications, 369 (67.5%) were classed as TLWG successful. 205 licences had additional licence conditions attached to them.

It was observed the TLWG audited labour providers were much better prepared the licensing.

## Some conclusions

The following conclusions can be drawn from the analysis –

- Very few "field gangs" have registered.
- Many businesses probably do not know that they need licences. It is implausible that there are no businesses supplying permanent or temporary labour to the food industry in large parts of England, Wales, Scotland and Northern Ireland.
- Probably a proportion of businesses that indicated that they are operating in more than one sector sectors may not currently be doing so. They are covering themselves for the future.
- The inconsistencies between the legislation, the regulations, the application form and the guidance notes are now exemplified in the Defra consultation paper on reasonable steps, which envisages that the labour user will have to deal with a named individual even though 46% of companies that have registered have not been required to name any individuals.
- The GLA website need significant amendment if it is to be of use to labour users wishing to check that the labour provider is licensed. In particular, the search facility must cover trading names as well as business names and it must be possible to print off and to save the entry for an individual labour provider.

## Appendix 2

### Checklist for using labour providers

#### Essential requirement - licensed or audited

By 1 October 2006 all labour providers to the agriculture and food industries must be licensed under the Gangmasters Licensing Act 2004. A list of licensed labour providers can be found on the public register at [www.gla.gov.uk](http://www.gla.gov.uk). This list also names labour providers that have applied for a licence and their current licence application status (draft, applied, licensed and refused)

Until 1 October 2006, there may be good reasons why a labour

provider has not yet received a licence. In this case the labour provider should have been audited under the Temporary Labour Working Group (TLWG) code of practice. A list of such labour providers can be found at [www.lpcode.co.uk](http://www.lpcode.co.uk).

## Recommended Requirements

### Verification

Being licensed or audited is an indication that a labour providers has had all of its relevant systems examined and that there were no outstanding issues. However, audits can check a position only at a point of time. A labour user may wish to seek verification (either through an inspection or by relying on self certification) of the following issues –

1. *Workers are legally entitled to work in the UK.* Labour providers should carry out “section 8” checks and should be able to demonstrate that they have done so, principally by having a photocopy of an identity card or the photograph page of a passport. (Some labour users have also sought to check that a labour provider is complying with the Accession States Worker Registration Scheme. This is inappropriate. Workers from the Accession States are legally entitled to work in the UK. The scheme is simply a statistical one and some categories of workers are not required to register. The scheme should not be part of any auditing arrangement.)
2. *Workers are paid at least the minimum wage .* This is £5.05, rising to £5.35 on 1 October 2006.
3. *Workers receive statutory benefits.* All workers are entitled for four weeks paid holiday a year. Holiday pay may be rolled up and paid with wages provided it is on top of the minimum wage and is identifiable on payslips. Workers are also entitled to statutory sick pay.
4. *Health and safety training.* There must be written agreement between labour providers and labour users on responsibility for health and safety training. Where part of the responsibility is with the labour user it must verify that all such training is undertaken.
5. *Payment of tax and national insurance.* The labour provider must pay to HMRC employers and employees’ national insurance contributions, income tax deducted from pay and VAT.
6. *Use of subcontractors.* Where subcontractors are used this must be with the agreement of the labour user, and all the terms in this checklist must be complied with.
7. *Providing details of workers.* Labour providers must ensure that labour users have a list of workers being supplied by them.
8. *All workers have written contracts.* All workers must have written contracts.

### Rate paid to labour providers

The rate that labour users pay to labour providers is a matter for negotiation. However, labour users must not offer rates that they know cannot be met without cutting legal corners. Where a seemingly low rate is being paid the labour user must verify with the labour provider how it is meeting its legal obligations and seek confirmation that it is doing so. The rate charged by labour providers must take into account the following (the original analysis was done by Defra and its percentages are used for transport and administration) -

- Employer’s national insurance contributions must be paid. In the current year the rate is 12.8% on earnings above £97 a week. As a percentage of the wage paid this varies from 6.65% for a worker working 40 hours at the minimum wage to over 10% for a worker working 60 hours at £5.50.

- Provision must be made for four weeks' holiday pay. Four weeks is 8.33% of 48 weeks worked.
- Provision must be made for statutory sick pay. Allowing for two weeks, 1% of wage costs are a reasonable estimate.
- Employers must meet their own administration costs. The Defra analysis suggests these are equal to 6% of wage costs.
- If transport is provided and not charged for this is an additional cost. The Defra analysis suggested a figure of 8.4% of wage costs. (Note that if a worker is on the minimum wage then it is not legally possible for a labour provider to make a compulsory charge to the worker for transport.)
- The labour provider has to cover management time and make a profit.

The following table summarises the position for the current and future minimum wage figures. It should be noted that the figures are typical, and cannot be applied in every case. In particular, the NIC and holiday pay figures will depend to some extent on hours worked and pay levels, transport costs apply only if transport is provided, and overheads are partly within the control of the labour provider. However, the figures are reasonable guidelines for a typical labour provider.

	<i>Current rate</i>	<i>Rate from 1/10/06</i>
Minimum wage	£5.05	£5.35
Employer's NICs @ 6.65%	£0.34	£0.36
Holiday pay @ 8.33%	£0.42	£0.45
Sick pay (allow 7 days) @ 1%	£0.05	£0.05
Overheads @ 6%	£0.30	£0.32
Cost without transport (22%)	£6.16	£6.53
Transport @ 8.4%	£0.42	£0.45
Total costs with transport (30%)	£6.58	£6.98

This calculation covers only costs and makes no allowance for management time and profit which must be negotiated between labour user and labour provider.

Some labour providers may claim that they are legally able to avoid national insurance contributions or holiday pay because of the status of their workers (eg self-employed or based outside the UK). This is simply not correct.

Any rate of under £6.58 an hour where transport is provided suggests that legal requirements are not being met. Labour users must not pay rates that they know are unrealistic. Similarly, where a labour provider is offering to work for a rate that at first sight does not allow legal requirements to be met with a reasonable allowance for management and profit then it should be asked to produce a table based on the above showing how the rate is made up.

## **Membership of the ALP**

The ALP is the trade association for labour providers that serve the food industry. It is a member of the TLWG and has been significantly involved in drawing up the licensing regime under the 2004 Act. The ALP has actively campaigned for clarity for Labour Providers on a number of regulatory issues and still continues to do so. While the Association does not have its own entry requirements and does not monitor its members, we would encourage membership as the ALP provides members with access to current information, advice and best practice that is otherwise not readily available. A list of members, identifying those that have been licensed or audited, is available at [www.labourproviders.org.uk](http://www.labourproviders.org.uk).

Labour users can become associates of the ALP which will ensure that they receive information at the same time as labour providers, have access to the members' part of the ALP website and have access to the advice service that the Association provides. Further information about the ALP can be found on this website [www.labourproviders.org.uk](http://www.labourproviders.org.uk). Labour users should feel free to contact the Chairman, Mark Boleat, on 01923 840498 or 07770 441377.