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DEFRA CONSULTATION ON CHANGES TO THE SCOPE AND GOVERNANCE OF THE GANGMASTERS LICENSING AUTHORITY

RESPONSE BY THE ASSOCIATION OF LABOUR PROVIDERS

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Introduction

The Gangmasters Licensing Authority's (GLA) aim is: "Working in partnership to protect vulnerable and exploited workers" to be achieved through the delivery of three priorities:

- Preventing worker exploitation
- Protecting vulnerable people
- Tackling unlicensed/criminal activity and ensuring those licensed operate within the law.

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

The ALP represents labour providers, all of which are subject to the licensing standards of the GLA. The Association has been heavily involved in the regulation of labour providers over the last seven years. It therefore has a major interest in this consultation.

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

Defra has published a consultation, open until 21 June 2013, on proposed changes to the:

1. Scope of GLA licensing
2. Governance of the GLA
3. Enforcement tools available to the GLA

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

1. Exclusions from licensing under consideration

As a basic principle, industry has a right to expect clarity regarding the scope of GLA licensing. Currently there is too much ambiguity about what falls within scope and what falls outside of the scope of GLA licensing. Guidance provided is unclear and incomplete. This current Defra review of the scope of licensing should seek to address and resolve this lack of clarity.

To determine whether GLA licensing applies requires a four step process:

- Is the Sector one that is regulated by the GLA? If Yes,
- Is the Work done by the worker covered by the GLA? If Yes,
- Has there been Supply of that worker? If Yes,
- Is the work covered by one of the Exclusions. If No, then GLA licensing applies.

Looking at each of these in turn, beginning with Sectors regulated by the GLA:

The Gangmasters (Licensing) Act 2004 defines the sectors for which a labour provider is obliged to obtain a gangmasters' licence prior to commencing the supply of workers as follows:

3 Work to which this Act applies

(1) The work to which this Act applies is-

- (a) agricultural work,
 - (b) gathering shellfish, and
 - (c) processing or packaging-
- (i) any produce derived from agricultural work, or
 - (ii) shellfish, fish or products derived from shellfish or fish.

This is subject to any provision made by regulations under subsection (5) below and to section 5 (territorial scope of application).

(2) In subsection (1)(a) "agricultural work" means work in agriculture.

(3) In this Act "agriculture" includes-

- (a) dairy-farming,
- (b) the production for the purposes of any trade, business or other undertaking (whether carried on for profit or not) of consumable produce,
- (c) the use of land as grazing, meadow or pasture land,
- (d) the use of land as an orchard or as osier land or woodland, and
- (e) the use of land for market gardens or nursery grounds.

In paragraph (b) "consumable produce" means produce grown for sale, consumption or other use after severance from the land on which it is grown.

(4) In this Act "shellfish" means crustaceans and molluscs of any kind, and includes any part of a shellfish and any (or any part of any) brood, ware, halfware or spat of shellfish, and any spawn of shellfish, and the shell, or any part of the shell, of a shellfish.

(5) The Secretary of State may by regulations make provision-

- (a) excluding work of a prescribed description from being work to which this Act applies;
 - (b) including work of the following nature as being work to which this Act applies-
- (i) the gathering (by any manner) of wild creatures, or wild plants, of a prescribed description and the processing and packaging of anything so gathered, and
 - (ii) the harvesting of fish from a fish farm (within the meaning of the Diseases of Fish Act 1937 (c. 33)).

Recommendation 1: Supporting guidance should provide a definition of what is defined as "agriculture" and "agricultural work". The definition at

<http://gla.defra.gov.uk/Guidance/Information-on-Licensing/Agriculture/> is inadequate.

With the abolition of the Agricultural Wages Boards there will need to be an expertise within the GLA as to what falls within and outside of agriculture. Fuller guidance was provided in 2006 by Defra (Appendix 1) although this will need to be reviewed and updated.

The GLA has provided further guidance on the scope of licensing on its website (Appendix 2) at:

<http://gla.defra.gov.uk/Guidance/Information-on-Licensing/Who-Needs-a-License/>
<http://gla.defra.gov.uk/Guidance/Information-on-Licensing/Agriculture/>
<http://gla.defra.gov.uk/Guidance/Information-on-Licensing/Processing-And-Packaging/> and
<http://gla.defra.gov.uk/Guidance/Information-on-Licensing/Shellfish-gathering/>

and in GLA Briefs

Issue 25 - How GLA licensing applies to veterinary practices

Issue 24 - How licensing applies to the poultry industry

Issue 15 - How licensing applies to work in forestry and other woodlands

Issue 10 - How licensing applies to the shellfish industry

Issue 4 - How licensing applies to machinery rings

and in guidance provided to the ALP on a wide variety of areas in 2010 (Appendix 3)

Recommendation 2: Supporting guidance should provide a definition of what is defined as the “processing or packaging” of “any produce derived from agricultural work”. The definition at <http://gla.defra.gov.uk/Guidance/Information-on-Licensing/Processing-And-Packaging/> is inadequate. Fuller guidance was provided in 2006 by Defra (Appendix 1) although this will need to be reviewed and updated.

Recommendation 3: Supporting guidance should provide a definition of how "consumable produce" defined as “produce grown for sale, consumption or other use after severance from the land on which it is grown” extends to the processing of meat and poultry.

Recommendations 1-3 are concerned with defining the Sectors in which the GLA's jurisdiction applies. With regard to the Work undertaken:

Recommendation 4: Supporting guidance should clearly identify which work within the Sectors regulated by the GLA is covered by the licensing regime. This includes previous Defra documents and advice on the scope of licensing as included in Appendices 1 - 3.

With regards to whether there has been a Supply of a worker, the Gangmasters (Licensing) Act 2004 specifies this as:

4 Acting as a gangmaster

- (1) This section defines what is meant in this Act by a person acting as a gangmaster.
- (2) A person ("A") acts as a gangmaster if he supplies a worker to do work to which this Act applies for another person ("B").
- (3) For the purposes of subsection (2) it does not matter-
 - (a) whether the worker works under a contract with A or is supplied to him by another person,
 - (b) whether the worker is supplied directly under arrangements between A and B or indirectly under arrangements involving one or more intermediaries,
 - (c) whether A supplies the worker himself or procures that the worker is supplied,
 - (d) whether the work is done under the control of A, B or an intermediary,
 - (e) whether the work done for B is for the purposes of a business carried on by him or in connection with services provided by him to another person.
- (4) A person ("A") acts as a gangmaster if he uses a worker to do work to which this Act applies in connection with services provided by him to another person.
- (5) A person ("A") acts as a gangmaster if he uses a worker to do any of the following work to which this Act applies for the purposes of a business carried on by him-
 - (a) harvesting or otherwise gathering agricultural produce following-
 - (i) a sale, assignment or lease of produce to A, or
 - (ii) the making of any other agreement with A, where the sale, assignment, lease or other agreement was entered into for the purpose of enabling the harvesting or gathering to take place;
 - (b) gathering shellfish;
 - (c) processing or packaging agricultural produce harvested or gathered as mentioned in paragraph (a).

In this subsection "agricultural produce" means any produce derived from agriculture.

(6) For the purposes of subsection (4) or (5) A shall be treated as using a worker to do work to which this Act applies if he makes arrangements under which the worker does the work-

- (a) whether the worker works for A (or for another) or on his own account, and
- (b) whether or not he works under a contract (with A or another).

(7) Regulations under section 3(5)(b) may provide for the application of subsections (5) and (6) above in relation to work that is work to which this Act applies by virtue of the regulations.

The GLA has provided certain advice and guidance on what Supply of workers means, particularly:

- Board Paper Reference – GLA13/8.5 – Overseas Labour Providers Issues – Progress Report (See Appendix 4)
- GLA Brief Issue 12 - Travel schemes and umbrella companies
- GLA Brief Issue 16 - How licensing applies to businesses based outside the UK

This last document, GLA Brief Issue 16 states:

What does supply mean?

Supply has a wide meaning and includes:

- introducing workers in any way to a labour provider or labour user for work in the GLA sectors,
- sourcing workers and forwarding them to a UK client for work in the GLA sectors (for example, by sending CVs or completed application forms), and
- any kind of screening of candidates for work in the GLA sectors, even if the end client makes the final decision to employ the worker.

This definition applies equally to businesses based in or outside the UK.

It does not matter whether the workers are self-employed, agency workers or employees – supplying any kind of workers to the GLA sector, regardless of their employment status, means a licence is needed.

Do "Agents" or "Intermediaries" need to be licensed?

It does not matter how a business describes itself, if they undertake any of the activities listed above, then it must have a GLA licence.

Recommendation 5: Current GLA guidance with regard to interpretation of the Gangmasters (Licensing) Act 2004 section 4 (2)-(6) should be enhanced and including whether the following organisations are regarded as "supplying" workers - Job boards, CV sourcers and suppliers, Umbrella companies, Neutral vendors, Managed service vendors, RPOs, Other intermediaries.

Recommendation 6: Supporting guidance should be prepared with the involvement and collaboration of relevant stakeholders and representative bodies. It should agglomerate all existing Briefs, webpages and other guidance into one "Scope of Licensing" document. This should be reviewed and approved by Defra lawyers before being made publicly available on the GLA website. It should remain a live document, being updated as required.

Exclusions from licensing are contained within The Gangmasters Licensing (Exclusions) Regulations 2010 which removes some sectors from the scope of GLA Licensing and specifies circumstances where a person does not need to obtain a licence.

The consultation states that the GLA has concluded that the new list of potential exclusions put forward in this consultation pose a very low risk of worker exploitation. The consultation states that the GLA has found that labour providers operating in these areas already demonstrate a high degree of compliance with employment, health and safety and other regulations. However, there is no evidence provided to support these statements.

The consultation states that, with the exception of the forestry sector, the total number of businesses falling into the sectors suggested for exclusion represent only about 1% of total licensed businesses. This means only 11 businesses in total, which seems too low a figure to be accurate.

With regard to Consultation Question 1 and whether the sectors listed those where the risk to workers of exploitation is low and can safely be excluded from the scope of GLA licensing:

1. **Apprenticeships** - the supply of apprentices by organisations operating as Apprentice Training Agency (ATA) type recruitment and employment models. Currently if a recognised educational establishment provides workers to farms as part of a recognised apprenticeship a licence is not required. Similarly a Group Training Agency (GTA), where a group of employers come together to provide training where the apprentices are employees of one of the organisations that is a member of the GTA does not require a licence. However ATAs recruit and employ apprentices and hire them out to a host employer for the duration of the apprenticeship and currently do require a licence;

ALP has heard anecdotal evidence that the apprenticeship model is being used to avoid the requirement to pay the adult NMW rate and that training offered is inadequate or indeed a sham. However ALP has seen no direct evidence of this.

2. **Cleaning contractors** - The use of workers by businesses operating in the food processing production line which provide cleaning services;

It is not clear what this means – it is assumed that this refers to the supply of such workers rather than the use, as is stated. Does it mean that cleaners operating on processing equipment are to be excluded as a sector? Does it mean that cleaners supplied by general labour providers are included but cleaners supplied by businesses providing cleaning services excluded? This would be anachronistic.

If indeed cleaning of the food processing production line is to be regarded as “processing” and thus falls within the Act, then the ALP sees no reason why to exclude the provision of these workers. If cleaning of the food processing production line is not regarded as “processing” and falls outside of the Act, then there is no reason to put a provision in the Exclusion Regulations.

3. **Cultivated Shellfish** – The use of workers by businesses holding Crown or Local Authority permits which confer exclusive rights to gather process and package cultivated shellfish. NB: with gathering of wild shellfish remaining in scope of the GLA;

ALP has little knowledge of this area but as the Act excludes the harvesting of fish from a fish farm it seems not unreasonable to extend this to cultivated shellfish.

4. **Forestry** – All recruitment or employment in the forestry sector other than in respect of orchards, woodland pasture and free range egg production which would remain within scope;

The GLA Forestry pilot appears to have identified that this is a sector that is appropriate to be removed from licensing. However in order to make an informed decision it would be necessary to see a comparison of non-compliance rates of the

forestry sector by licensing standard inspected by the GLA compared to a general sample of agricultural contractors and general labour provider licence holders.

5. **Land Agents** – Any professional agent engaged or contracted by a landowner to manage the day-to-day running of their estates;

The ALP has no objection to the exclusion of professional land agents as defined in GLA Board paper 32/8.3.

6. **Voluntary workers** – The use and supply of voluntary workers to undertake conservation and other work on farmland or voluntary work in other regulated areas or activities;

If volunteers are to be excluded the GLA should develop procedures (such as it has done in GLA Brief Issue 18 - How the GLA tests employment status) to identify who it regards as true volunteers as opposed to “workers” wrongly classified as such in order to avoid the obligation to provide minimum wage. Features of a volunteer arrangement include:

- agreements setting out the arrangement are simple and non-legalistic;
- payments are for expenses only and cannot be construed as wages;
- there are no penalties or sanctions for poor attendance or for failure to attend;
- there is no obligation for the organisation to provide any work or for the volunteer to carry out any specific tasks.

7. **Public and Quasi Public bodies** (including Government Department, agencies, NDPBs and private and voluntary sector partner organisations) – the supply of a worker during the delivery of schemes to reintroduce the unemployed back into work on behalf of Government and its agencies;

The title on this proposal “Public and Quasi Public bodies” is a little misleading as it then goes onto include all private sector partner organisations. It is accepted however that it is not the intention of the licensing regime to cover this type of arrangement. However in situations where this model is used to provide large numbers of workers into the sector there should be no exclusion.

8. **Raising crops and livestock as a service to a third party** – The use of workers by a farmer who enters into arrangements with a third party to raise agricultural crops and livestock where ownership of the crops and stock raised remains with the third party.

This matter was dealt with under GLA Board Paper 33/8.2 and the GLA public statement on section 4(5)(a) and (c) of the Gangmasters (Licensing) Act 2004, “These sub-sections are anti-evasion provisions designed to ensure that people who act as gangmasters cannot avoid compliance with the Act by artificially presenting their activities as farming. The GLA will only investigate arrangements to purchase crops where the intention appears to be to allow someone who is in

substance a “gangmaster” to avoid compliance. This is in keeping with GLA’s overall approach which is intelligence led and targeted according to risk.”

ALP considers that the GLA Board Paper 33/8.2 and the GLA public statement above have effectively dealt with this matter. ALP is concerned that this Exclusion be used by people acting as gangmasters to avoid compliance with the Act by artificially presenting their activities as farming.

With regard to Consultation Question 2, the ALP believes that the following could be considered as roles / sectors with a low risk of worker exploitation that should be excluded from the scope of GLA licensing.

- Current England and Wales Agricultural Wages Order grades 4-6.
- Professional chefs preparing food e.g. for premium class airline flights
- Engineers that work on machinery while the line is ‘live’ in production / On-line Engineering technicians who have a production machine minding role.

2. Proposed changes to the Governance of the GLA

The Consultation propounds that:

- The GLA Board is too large to discharge its principal responsibility of directing the affairs of the Authority.
- The wide range of interests represented on the Board means the GLA lacks the benefit of more focused external input and challenge.
- Streamlining the GLA Board so its size is in line with the Boards of similar public bodies will improve the efficiency of decision making, and provide the GLA with a better strategic focus for its operational activities.
- Widening the pool from which candidates for Board membership may be drawn beyond the organisations set out in the 2005 Regulations will increase the diversity of the Board.
- A move to open competition for Board places based on merit.

The consultation proposes an alternative governance model with:

- a clearer distinction drawn between the role of the Board which runs the GLA and the need for GLA to gather the views of its stakeholders and feed these views into GLA policy making and strategy;
- a smaller GLA Board comprising executive members and non-executive members appointed on merit; and
- A greater formal role for GLA Liaison groups, currently the Labour Provider and Labour Users Groups and possibly a re-activated Workers Liaison Group.

This consultation invites views on alternative models for the GLA Board.

With regard to Consultation Question 3 - Do you agree that the size and the system for the GLA Board appointments should be amended to bring them more into line with best practice in other similar bodies? The ALP comments as follows:

The current make-up of the Board has served the GLA since it was formed in 2005. There have been a number of advantages delivered by the existing structure:

- It has been made up of a wide and diverse stakeholder group with a common intent to support and promote the work of the GLA. This has achieved acceptance of the licensing scheme within the regulated sectors.
- This wide stakeholder group has delivered a deep understanding of the industry the GLA regulates with the individuals on the Board who work in the industry ensuring that the GLA has instant and relevant feedback
- The Board has always adopted a consensus approach. In the life of the current Board structure there has never been a requirement for a vote.
- The structure served the style of previous GLA Executive leadership

However, it is appropriate that the structure of the Board is reviewed to address certain disadvantages and better serve the current and future needs of the GLA as outlined in the 2013-16 strategy, particularly:

- The large number of Board members makes effective decision making difficult.
- A number of Board positions have only a marginal interest in the work of the GLA.

- The current Board does not have collective responsibility for the overall performance and success of the body, nor does it provide as effectively as it might, strategic leadership, direction, support and guidance.
- The board, being wholly made up of nominated positions, does not have the optimal balance of skills, experience, independence and knowledge.
- There is no established and agreed framework of strategic control; terms of reference specifying which matters are specifically reserved for the collective decision of the board or formal procedural and financial regulations to govern the conduct of its business. The duties, role and responsibilities, terms of office and remuneration of non-executive board members should be set out clearly and formally defined in writing.
- There are no GLA executive positions on the Board. The Chief Executive should be accountable for the performance of the public body; for the implementation of the Board's policies; for appropriate advice on all financial matters and that Board procedures, applicable statutes and regulations and other relevant statements of best practice are followed.

In re-structuring the Board, Defra should be mindful:

- Not to lose the multi-stakeholder support and engagement that the GLA has successfully achieved.
- To maintain an appropriate balance of the relevant stakeholder groups – notable representatives of workers, labour providers, labour users and supermarkets.
- That whilst a Cabinet Office best practice principle of good corporate governance for Boards is that members are “independent”, to ensure that a deep understanding of the industry the GLA regulates is retained, that the a number of Board members are selected from the relevant stakeholder groups above.
- Not to lose the institutional intelligence that the GLA Board has built up over a number of years.

The ALP proposes as follows:

- A Board made up as follows
 - GLA Chair, Chief Executive and Chief Financial Officer
 - An ex officio representative of the Secretary of State for Environment, Food and Rural Affairs
 - 2 members with a worker representative background (2 TUC nominated)
 - 3 members with a labour provider background (1 ALP nominated, 1 REC nominated, 1 independent)
 - 2 members with a labour user background – 1 grower / 1 producer (e.g. 1 NFU/FPC nominated, 1 FDF nominated)
 - 1 member with a retailer expertise (1 BRC nominated)
 - 3 other independents – with particular functional skills in finance; legal; regulatory or academic e.g. forced labour expertise; migrant worker support
- The above proposal which propounds a balance between nomination and open advertising of roles:

- Streamlines the GLA Board size in line with the Boards of similar public bodies to improve the efficiency of decision making; enables the Board to have a better opportunity to direct the strategic focus and operational activities of the Authority and introduces external input and challenge.
- Ensures that the Board retains a balance across the relevant stakeholder groups and the valuable connections that the GLA has with its industry sector and has the potential to retain individuals with an institutional intelligence and a deep understanding of the regulated industry;
- Moves to open competition for the independent Board positions with recruitment through an open and public process and selection based on merit designed to deliver the most able individuals with the right mix of skills to oversee effectively the performance of the GLA. Nominated positions should also be subject to an interview with the selection panel.
- There should be an annual evaluation of the performance of the board and its committees – and of the Chair and individual board members.

With regard to Consultation Question 4 - What mechanisms would you favour to ensure that a smaller GLA Board had access to and took account of a wide range of stakeholder knowledge and viewpoints?

ALP advocates a small number of statutory board sub-committees, each:

- With a properly constituted terms of reference
- Chaired by a non-executive Board member
- Made up of active, engaged and contributing participants
- With defined roles and objectives depending upon their function, each providing feedback and input to the GLA executive and main board as required
- Each to be provided with the appropriate information on the performance and substantive activities of the GLA in order to perform their function.

Proposed Statutory Sub-Committees would be:

- A Finance and General Purposes Committee. This committee to have responsibilities as currently broadly laid out and to make recommendations on the remuneration of GLA executives; to ensure that the GLA's rules for recruitment and management of staff provide for appointment and advancement on merit.
- An Audit and Risk Committee - This committee to have responsibilities broadly as currently laid out.
- A Supply Chain Liaison Group – with a wider representative group of labour provider representatives; labour user representative organisations e.g. NFU, NFU Scotland, BGA, HTA, FPC, FDF, BPC, Shellfish Association of Great Britain and retail representatives e.g. supermarkets and BRC.

This group to have particular responsibility for input, feedback and comments on operational matters affecting the industry supply chain.

- A Worker Liaison Group – made up of a wider pool of trade union representatives; migrant worker support groups and NGOs such as MigrantHelp; Salvation Army; Migrant Rights Network; Oxfam; CAB; JRF; academic experts and others.

This group to have particular responsibility to ensure the interests of workers are represented.

- An OGD and Enforcement Group - – made up of Association of Chief Police Officers; Police Superintendents Association; Local Authority Coordinators of Regulatory Services; Secretary of State for Home Affairs; Secretary of State for Work and Pensions; Secretary of State for Environment, Food and Rural Affairs; The Commissioners of Inland Revenue and the Commissioners of Customs and Excise; Secretary of State for Trade and Industry; The Director General of the Health and Safety Executive; The Scottish Ministers; The National Assembly for Wales; The Minister for Agriculture and Rural Development for Northern Ireland.

This group to have particular responsibility for the interaction with other government departments, regulatory and enforcement authorities and other public bodies as required.

3 Civil sanctions as an alternative to prosecution

Currently when the GLA finds that a business has committed an offence under the 2004 Act the sanction available to it is prosecution via the Courts and this is likely to be appropriate where there is evidence of worker exploitation.

However recourse to the Courts by the GLA has proven to:

- Be not in the public interest where breaches of the law are technical in character.
- Be costly financially to business and the public purse
- Be unnecessarily time consuming for all parties. The GLA currently has around 80 criminal cases under consideration – no doubt many of these could be dealt with through civil sanctions.
- Potentially result in disproportionate reputational harm to the businesses involved.
- Generally result in low judicial fines providing no criminal deterrent

The GLA is a designated regulator under the Regulatory Enforcement and Sanctions Act 2008 (RES) and an order made under that Act would enable the GLA to make use of civil sanctions provided for under the Act.

The November 2012 written ministerial statement by the Rt Hon. Michael Fallon, set out Government policy on the use of civil sanctions under RES stating that:

- Powers to impose Fixed Monetary Penalties, Variable Monetary Penalties and Restoration Notices will, as a general rule, only be granted where their use is restricted to undertakings with more than 250 employees;
- Powers to impose Enforcement Undertakings, Stop Notices and Compliance Notices may be granted without restriction as to the size of undertaking against whom they might be used.

This consultation proposes to conform to this policy and proposes giving the GLA powers to enter into Enforcement Undertakings but not on introducing Fixed Monetary Penalties, Variable Monetary Penalties or Restoration Notices under the RES Act.

Circumstances put forward in the proposal where it is stated that the use of Enforcement Undertakings by the GLA would be more appropriate than prosecution include where:

- a business operates in the GLA regulated sectors without a licence but meets the requirements in the Licensing Standards for businesses applying for a gangmasters licence;
- a business has been supplied workers by an unlicensed gangmaster that is found to be compliant with the GLA Licensing Standards.

Whilst the ALP agrees that prosecution would be inappropriate in the above cases:

- the use of an Enforcement Undertaking adds nothing that cannot be achieved by an interview under caution and appropriate operational processes
- a Fixed or Variable Monetary Penalty would be more appropriate in both the circumstances. This would act as a deterrent and ensure that unlicensed businesses do not profit financially in terms of unpaid licence fees from having remained unlicensed compared to a legitimate business that has complied with the licensing regime.

The Consultation also proposes that Enforcement Undertakings be used to encourage businesses to comply with the GLA licensing scheme. It suggests that where businesses fail to meet the criteria for licensed gangmasters set out in the GLA Licensing Standards the only sanction available to the GLA is to revoke the licence. However where breaches are minor allowing a gangmaster to continue in business, provided it took action to return to compliance, would avoid disruption to clients and workers. Circumstances where this approach could be used include where:

- a business fails to pay workers the correct minimum wage but there is no evidence of a deliberate attempt to under-pay the workers;
- a business fails to meet the additional licensing conditions agreed following an inspection, but does not reach the level of critical non-compliance which would result in their licence being revoked.

The ALP believes that the Consultation document is mistaken in stating that where licensed businesses fail to meet the GLA Licensing Standards criteria the only sanction available to the GLA is to revoke the licence. The current [April 2012 GLA Licensing Standards booklet](#) shows the proportionality in decision making available to the GLA:

“4.10 Inspection score is below 30 points

Additional Licence Conditions (ALC) will be attached to the licence. An ALC is a specific requirement which a licence holder must comply with. Usually, ALCs will be against individual non-Critical Standards where non-compliance has been identified. The licence will become conditional on those non-compliances being corrected. The GLA will explain what measures need to be taken to rectify identified non-compliances.

4.11 Inspection score is 30 points or more

The application or licence will usually be refused or revoked. However, the GLA may consider attaching ALCs where it is proportionate to do so after considering the extent and nature of the non-compliance.”

Consequently the use of an Enforcement Undertaking with regard to licensed businesses appears to add nothing to the available proportionality of existing GLA powers.

In response to Consultation questions:

5. Do you agree or disagree that the GLA should have access to Enforcement Undertaking civil sanction in addition to their current powers to address breaches of the law? What is the evidence to support your answer?

6. If you agree, do you have a view on how the GLA might implement an Enforcement Undertaking civil sanction?

The ALP responds as follows:

- RES civil sanctions will enable the GLA to take a more flexible and proportionate approach as an alternative to prosecution and revocation where it is appropriate to do so.
- The proposal in the Consultation for the use of Enforcement Undertaking seems to add nothing to existing GLA powers.
- Government policy is that it is only “a general rule” that powers to impose Fixed Monetary Penalties, Variable Monetary Penalties and Restoration Notices will only be granted where their use is restricted to undertakings with more than 250 employees. Sufficient grounds exist for an exception to be made to this general rule in the case of the GLA.
- The ALP supports where appropriate as an alternative to prosecution the imposition of Monetary Penalties on businesses operating in the GLA regulated sectors

without a licence and to businesses using the services of an unlicensed gangmaster.

- The ALP's view on extending the GLA's power to impose Fixed Monetary Penalties, Variable Monetary Penalties and Restoration Notices on licensed businesses is more measured.

The GLA facilitates a fair, competitive trading environment for legitimate labour providers by taking effective and proportionate action to prevent and stop businesses from undercutting either through tax evasion, worker exploitation or both. Extending the GLA's powers to include these sanctions will assist it perform this function and provide it with a range of more proportionate civil sanctions as an alternative to licence refusal or revocation.

However there is much that will need to be determined, if indeed this is to progress at all. For instance Restoration Notices could have the potential to cover reimbursement where there has been:

- non-payment of minimum wage;
- unlawful deductions and payments
- non or under-payment of holiday pay
- non-payment of tax relief on travel and subsistence expenses
- non-payment of SSP
- non-compliance with regard to equal treatment under the Agency Workers Regulations

There will also need to be clear rules and procedures for such matters as:

- The level of fines and penalties
- How retrospective repayments will be dealt with
- The application of interest to late payments
- Action to take with regards to ex-workers
- The interaction between the levying of such fines and Employment Tribunals
- Action in the event where imposition of the repayment would lead to the winding up of the labour provider
- Action in the event of non-payment by the labour provider and so on

As such, if this were to be considered there would need to be significant discussion regarding the scope and processes.

- The Consultation correctly identifies a concern of regulated businesses:
“Because cases are not brought before the Courts prior to the imposition of a civil sanction under the RES Act (although a right of appeal to a first tier tribunal against their decision exists), businesses are unable to present a defence in Court prior to action being taken. It is therefore possible, in theory, that a business could be wrongly or unfairly penalised but lack the means to remedy this until after the sanction had been imposed, with damaging economic consequences for the business.”

In its submission to the [Government Review of Regulatory Appeals Mechanisms](#) the ALP proposed four recommendations to prevent businesses being “wrongly or unfairly penalised” in GLA decisions. In the case of the imposition of a civil sanction under the RES Act the ALP would propose that there be an internal review or appeals process before a business being required to submit an appeal to a first tier tribunal.

Appendix 1 - Document prepared by Ian Kelly, Defra– 21/6/2006

DO I NEED TO OBTAIN A LICENCE?

AM I ACTING AS A GANGMASTER?

The Gangmasters (Licensing) Act 2004 defines what is meant by someone acting as a gangmaster. A person needs a licence if he / she acts as a gangmaster. A person acts as a gangmaster if he / she:

- Supplies a worker to undertake:
 - agricultural work,
 - gathering shellfish, and
 - processing or packaging;-
 - any produce derived from agricultural work, or
 - shellfish, fish or products derived from shellfish or fish.
 - Uses a worker to undertake:
 - agricultural work,
 - gathering shellfish, and
 - processing or packaging;-
 - any produce derived from agricultural work, or
 - shellfish, fish or products derived from shellfish or fish.
- In connection with services provided to another person
- Uses a worker to harvest, gather, process or pack agricultural produce after the produce has been sold or leased to a third party
 - Uses a worker to gather shellfish (after 1 October 2006)

IF I AM ACTING AS A GANGMASTER DO I QUALIFY FOR AN EXEMPTION FROM LICENSING?

The Gangmasters (Licensing) Act 2004 was drafted in broad terms to ensure that all labour providers can be required to obtain a licence. When the Act was drafted it was recognized that this approach could lead to the inclusion within the licensing requirements of certain types of labour supply where the risk of serious exploitation is minimal. Consequently the Act gives the Secretary of State the power to make regulations specifying circumstances in which a licence is not required. The Gangmasters (Exclusions) Regulations 2006 provide for the exclusion from the licensing arrangements of a range of circumstances where a licence is not required.

Circumstances when a licence is not required

- Short term farmer to farmer loan of a worker

- Short term farmer to farmer loan of a gang worker with the gangmaster's permission
- Supply from one farmer to another under a share farming agreement
- Worker provided by a contractor to operate machinery
- Provision of a service involving the supply of a machine with an operator
- Use of a worker by a service provider where the service provider is the employer and the owner of machinery / premises used
- Use of a worker where title to the land but not the crops has transferred to a third party
- Supply of a worker by an educational establishment in furtherance of training
- Supply of an individual specialist worker by a labour provider
- Supply of a worker to a shop or retail establishment
- Supply of a worker to a catering establishment
- Supply of a worker to a wholesale market
- Supply of a worker to a wholesale establishment
- Supply of a worker to a distribution warehouse.
- Supply of a worker to process or pack non-food products containing an agricultural/ fish / shellfish component e.g. cosmetics or paint brushes
- Supply of a worker by a sole SAWS operator to another SAWS operator
- Supply of a licensed slaughterman
- Fish Farming
- Before 1 October 2006 - The supply or use of a Worker to gather shellfish
- After 1 October 2006 - Use of a worker to gather shellfish from a fishing boat

I AM ACTING AS A GANGMASTER BUT I AM UNCERTAIN IF I AM DOING WORK TO WHICH THE ACT APPLIES?

Agricultural work – guidance on activities which are likely to fall inside the definition of “agricultural work”

- care of and attention to bulls kept and used in connection with artificial insemination;
- care of and attention to poultry in batteries or other housed poultry;
- drawing and plucking poultry for a first sale, on the premises on which the birds are reared;
- planting, felling and other jobs generally connected with the establishment, maintenance and harvesting of woodland or forests;
- employment in the gardens of a hotel, school, convent, hospital or other institution growing food wholly or mainly for outside sale or for consumption on the premises;
- packing and grading of eggs or other produce on the farm on which the eggs were produced (but NOT at a packing station);
- pheasant breeding if the land on which they are reared contributes to their upkeep and if they are reared to be eaten or sold as food but not for shooting;

- grass drying where it involves the employer's own grass;
- agricultural mechanics where they are employed by the farmer himself/herself rather than by a third party or by a contractor.
- Secretarial / Administrative duties which are integral to the production process e.g. maintenance of milk yield records, ordering feed / fertilisers etc.
- picking fruit, field vegetables, arable crops, flowers
- working with food chain livestock
- working on a dairy farm
- growing vines
- chicken catching
- work on a market garden

Agricultural work – guidance on activities which are likely to fall outside the definition of "agricultural work"

- care of and attention to poultry or bantams kept solely as a hobby for showing at country shows etc;
- chick sexing;
- seed analysis;
- packing and grading of eggs or other produce at a packing station (although it is likely that this will fall within the definition of "processing" and "packaging");
- groundsmen looking after playing fields or the greens of a golf course;
- the "private" gardener producing fruit or flowers for use in the private household of the employer, or employed in amenity grounds e.g. tending lawns, flower beds etc. (The determining factor is whether the gardener is employed on the production of "consumable produce" - this may for example include flowers - that is grown for sale or for consumption or other use for the purpose of a trade or business or of any undertaking whether carried out for profit or not);
- exclusive employment as a landscape gardener;
- grounds maintenance for a Local Authority
- employment at hunting or racing stables, e.g. as a groom;

- preparing poultry after the birds have been purchased from a primary producer (although it is likely that this will fall within the definition of “processing” and “packaging”);
- gamekeeping;
- a worker engaged solely on distributive duties, such as milk transport from the farm;
- employment as a temperature regulator in a greenhouse;
- working with non-food chain animals (such as a zoo keeper)
- artificial insemination;
- employment as a blacksmith;
- scrubbing and cleaning incubators and trays on a holding run independently of a farm where the eggs are produced;
- peat walling.
- administrative duties which are not integral to the production process e.g. preparation of accounts / payment of wages
- veterinary work on a farm
- fish farming
- gathering of wild creatures and wild plants

Processing and packaging work - guidance on the types of roles which are likely to fall inside the definition of “processing and packaging”

Food and drink processing operatives

Food and drink processing operatives operate machines and prepare foods for processing using a wide range of equipment and methods. Their job will involve some or all of the following activities:

- check and weigh raw materials
- prepare and sort materials to be processed
- ensure that machine settings are correct
- feed in material to be processed
- attend production line to prepare the product
- take samples and carry out quality checks
- take off the processed product from the production line
- operate food conveyor and processing equipment and machinery
- clean food conveyor and processing equipment and machinery.

Food and drink packaging operatives

Food and drink packaging operatives pack products to prepare a product for sale and to preserve any goods which are perishable. Packing operatives may pack products by hand or through the use of machines. The products may be packaged in bottles, cans, bags, foil, paper or other such material used for packaging. The job of a packaging operative may involve some or all of the following activities;

- select suitable packaging
- operate packaging, canning, bottling and sealing machinery
- manual packaging of products
- carry out quality checks
- weighing packaged products
- labelling packaged products

Supervisory workers involved in processing and packaging

Leading Hands, Senior Line Operators and Line Leaders and who work on the processing lines and who are also involved in processing and packaging activity as well as the supervision of their colleagues.

Processing and packaging work - guidance on the types of roles which are likely to fall outside the definition of “processing and packaging”

Supervisory workers not involved in processing and packaging

Team Leaders and other supervisory staff who oversee the work of the processing and packaging operatives but do not take part in the processing and packaging activities themselves (apart from showing an operative how the work should be done).

Food Technicians

Food processing technicians check production processes, assist food technologists in developing food products and establish standards for production and processing. They remain outside the scope of the licensing arrangements if they do not take part in the processing and packaging activities carried out by processing and packaging operatives.

Engineers

Supplied solely for the purpose of maintaining food and drink processing machinery and equipment. Typically the engineers will need to intervene when malfunctions take place in order to repair the operation of the machinery or equipment. The extent to which the engineers handle food will normally be limited to the removal of food in order to clear a blockage. They could be industrial machinery mechanics, maintenance repairers or more specialised types of worker such as heating, air-conditioning and refrigeration mechanics and electrical engineers.

Food technologists

Food technologists are involved in the development of new, and modifying existing, products and processes. This involves;

- checking and improving quality control procedures in own and suppliers' factories, from the raw material stage through to the finished product;
- developing product ideas;
- selecting products from suppliers;
- addressing issues of safety and quality.
- carrying out process support and development, new product development, and quality control;
- liaising and co-operating with technical and commercial colleagues in procurement, sales and technical service, marketing and distribution, and also with official food inspection and hygiene agencies. This takes up a considerable proportion of typical activities on the manufacturing side.

Warehouseman

Typically a warehouseman will be involved in storing the product which has been processed and or packed. He may also be involved in the loading of the product onto lorries for distribution. The warehouseman will not normally be involved in processing and packaging activity although in securing products for bulk distribution he may wrap or secure the product (with string, bubblewrap etc) while it is being stored or before it is loaded onto a lorry.

Factory Cleaner

Workers involved in cleaning the factory floor but not in cleaning the processing machinery and equipment are not considered to be involved in processing and packaging.

Forklift Drivers

May be involved in loading pallets of processed and packed food and drink onto lorries. Does not fall within the definition of processing and packaging.

Lorry Drivers

Does not fall within the definition of processing and packaging.

Managerial, Technical and Clerical

Engineering Manager, Factory Manager, New Product Development Food Technologist, Food Scientist, Operations Manager/Director, Planner, Process Technologist, Production Supervisors/Managers, Order Staff, Secretaries, Directors, Human Resources personnel, Information Technology personnel, Marketing personnel, Chemists, Sales personnel and other office workers.

IS THE PRODUCT WHICH I HAVE SUPPLIED WORKERS TO PROCESS AND PACKAGE COVERED BY THE LICENSING SCHEME?

Labour supplied by a Gangmaster to process and pack	Licence Status
Pet food	In

Animal feed	In
Bread and cakes	In
Dairy products	In
Beer, Cider, wine and Spirits	In
Meat and meat products	In
Slaughter of animals	Out
Fish and fish products	In
Ready meals	In
Sandwiches	In
Sugar	In
Soup	In
Fruit juice	In
Soft Drinks	In
Chocolate	In
Crisps	In
Biscuits	In
Salad	In
wild creatures or wild plants	Out
Pizza	In
Flowers	In
pot-pour	In
Dips/sauces/ condiments	In
Cereals	In
carbonated drinks	In
Concentrate drinks	In
Vitamin/other tablets	Out
Health food supplement (if containing agricultural, fish or shellfish ingredients)	
Ready meals	In
Cotton / natural fabric	Out
Baby food	In
Spring water (if not containing agricultural ingredients)	Out
Mineral water (if not containing agricultural ingredients)	Out
Salt	Out
Pepper	In
Fresh produce	In
Wool	Out
Leather products	Out
Animal hides	In
Furniture	Out

Appendix 3 – GLA Webpages dealing with Scope of Licensing

[http://gla.defra.gov.uk/Guidance/Information-on-Licensing/Who-Needs-a-License/
Who Needs a Licence?](http://gla.defra.gov.uk/Guidance/Information-on-Licensing/Who-Needs-a-License/Who%20Needs%20a%20Licence?)

Our licensing scheme regulates businesses that provide workers to the fresh produce supply chain.

The scheme ensures that businesses who supply workers (labour providers, gangmasters or agencies) and businesses who need workers (labour users, farmers, pack houses) meet the employment standards that are required by law.

Which sectors are covered by the scheme?

A wide range of sectors are regulated by the licensing scheme:

- Agriculture
- Horticulture
- Forestry
- Fish processing
- Gathering shellfish
- Dairy farming
- Packaging or processing of food and drink products

Anyone who supplies labour to these sectors will require a GLA licence.

The scheme also covers anyone who uses labour to provide a service in the regulated sectors, for example harvesting or gathering shellfish.

Businesses based overseas

A licence is needed for any work carried out in the UK, even if the business is located overseas. All workers, temporary or permanent are covered by the licensing scheme. Read our [Labour providers based outside the UK](#) page for more information on supplying workers if your business is overseas.

Exemptions from the scheme

There are some circumstances where a licence is not required. These exclusions apply to specific situations. Read the [Exclusions](#) page for more details on the work that does not require a licence.

If you are unsure whether you need a licence, please [contact us](#) for guidance. It is a criminal offence to operate without a licence. For more information read our pages on [offences](#) and [penalties](#).

Find out more...

[Agriculture](#): Further information on the agricultural work covered by licensing

[Processing and packaging](#): Further information on the products covered by licensing

[Shellfish gathering](#): Further information on who needs a licence in the shellfish sector

[The licensing standards](#): The conditions that must be met to qualify for a licence

[The Gangmasters \(Licensing\) Act 2004](#): Legislation

Agriculture

Agriculture is one of the sectors regulated by the GLA. If you supply workers for any agricultural work, including the activities listed below you will need a GLA licence.

- Harvesting, gathering or picking of agricultural produce
- Packing and grading of eggs or other produce on the farm where the eggs were produced
- Care of and attention to poultry in batteries or other housed poultry
- Drawing and plucking poultry for first sale, on the premises where the birds were reared
- Pheasant breeding, if the land on which they are reared contributes to their upkeep and if they are reared to be eaten or sold as food, but not for shooting
- Care of and attention to bulls kept and used in connection with artificial insemination
- Employment in the gardens of a hotel, school, convent, hospital or any other institution growing food wholly or mainly for outside sale or for consumption on the premises
- Grass drying where it involves the employer's own grass
- Agricultural mechanics where they are employed by the farmer rather than by a third party or by a contractor
- Secretarial / administrative duties which are integral to the production process, such as the maintenance of milk yield records, ordering feed or fertilizers.

Still not sure whether you need a licence?

[Contact us](#) for advice. You can call our help desk on 0845 602 5020 or email licensing@gla.gsi.gov.uk and we will tell you whether you need a licence.

We would recommend your enquiry is sent by e-mail so you will have a record of our response for your records. Please provide full details of the type of work the workers will be doing, where it will be done and if possible, provide a job description of the role in question.

Offences and penalties

It is a criminal offence to operate as a gangmaster without a licence. The maximum penalty is ten years in prison and a fine. For more information read our pages on [Penalties](#) and [Offences](#).

Find out more...

[How to apply and renew](#): The application and renewal process

[The licensing standards](#): The conditions that must be met to qualify for a licence

[Gangmasters \(Licensing\) Act 2004](#): Legislation

[Exclusions](#): The circumstances where a licence is not required

Processing And Packaging

The processing and packaging of food and drink is one of the sectors regulated by the GLA. If you supply workers to process and package any produce derived from agricultural work, shellfish or fish you will need a GLA licence.

Some examples are shown below, but this list is not exhaustive - please [contact us](#) if you do not see your area of work listed, you may still need a licence.

- Animal feed
- Baby food
- Beer
- Biscuits
- Bread
- Cakes
- Carbonated drinks
- Cereals
- Chocolate
- Concentrate drinks
- Condiments
- Crisps
- Cider
- Dairy products
- Dips
- Eggs
- Fish and fish products
- Flowers
- Fresh produce
- Fruit juice
- Meat and meat products
- Pepper
- Pet food
- Pizza
- Potpourri
- Ready meals
- Salad
- Sandwiches
- Sauces
- Soup
- Soft drinks
- Sugar
- Spirits
- Wine

Still not sure whether you need a licence?

[Contact us](#) for advice. You can call our help desk on 0845 602 5020 or email and we will tell you whether you need a licence.

We would recommend your enquiry is sent by e-mail so you will have a record of our response for your records. Please provide full details of the type of work the workers will be doing, where it will be done and if possible, provide a job description of the role in question.

Shellfish gathering

Shellfish gathering is one of the sectors regulated by the GLA. If you use or supply workers to gather shellfish you will need a GLA licence.

Do you:

- employ workers under a contract of employment?
- use self employed workers?
- use workers to collect shellfish on your behalf, including collection in a private fishery?
- organise or manage groups of workers, even if the workers do not sell directly to you?

If so, you will need to [apply for a licence](#).

Managing work and workers

If you or your supervisor control where, when or how others work, you will also need a licence.

Do you:

- provide equipment, such as rakes or quad bikes?
- transport workers to a shellfish bed to collect for you?
- tell others to gather from a new shellfish bed you have found?

If you have answered yes to any of these questions, you will need to [apply for a licence](#).

Buying shellfish

You will also need a licence if you or your supervisor require anyone to sell their catch to you as the first link in the buying chain (if the buying and paying arrangements are made away from the shellfish beds and shore), or if you request the shellfish you purchase must be from a particular bed.

Still not sure whether you need a licence?

[Contact us](#) for advice. You can call our help desk on 0845 602 5020 or email licensing@gla.gsi.gov.uk and we will tell you whether you need a licence.

We would recommend your enquiry is sent by e-mail so you will have a record of our response for your records. Please provide full details of the type of work the workers will be doing, where it will be done and if possible, provide a job description of the role in question.

Offences and penalties

It is a criminal offence to operate as a gangmaster without a licence. The maximum penalty is ten years in prison and a fine. For more information read our pages on [Penalties](#) and [Offences](#).

Find out more...

[How to apply and renew](#): The application and renewal process

[The licensing standards](#): The conditions that must be met to qualify for a licence

[Gangmasters \(Licensing\) Act 2004](#): Legislation

[Exclusions](#): The circumstances where a licence is not required

Appendix 3 – Guidance provided by Defra – July 2010

1. Halal Blessers

For the purposes of licensing, the sole act of blessing the meat processing does not require a licence. However if the Blessing is involved in any other activity involving the processing of the meat or poultry e.g. the Blessing kills the birds / animals, and the Blessing is supplied to the labour user by another organisation, a licence is required.

2. Factory Cleaners (including from a Facilities Management Company) -

Distinction between cleaning the production line; night hygiene cleaners who clean the production line; cleaners who only clean the factory floor/walls.

Those engaged in cleaning the production area would be covered by the scheme whether or not it was operating. However, those undertaking cleaning activities away from the immediate production line are unlikely to be covered. A Facilities Management company which employed workers to clean the production area of a food processing plant would be covered by the licensing scheme as they would, in effect, be using a worker to provide a service. If they only clean floor/walls then the work would not be covered.

3. Hand pallet/Fork lift truck drivers who remove completed pallets from the end of the line.

This work is unlikely to be covered by the scheme.

4. Warehouse Repack Operations (Separate premises from production) - Operators breaking down pallets of food into cases/part pallets.

This activity would only be excluded if taking place in a wholesale or retail environment, or if a distribution warehouse. Otherwise it would be covered by the licensing scheme.

5. Warehouse Repack Operation (Separate premises from production) – Putting packed food items into other containers e.g. Confectionery into Christmas selection boxes / stockings or putting a mixture of food and non-food items gift packs/hampers.

This activity would only be excluded if taking place in a wholesale or retail environment, or if a distribution warehouse. Otherwise it would be covered by the licensing scheme.

6. Engineers that work on machinery while the line is ‘live’ in production / On-line Engineering technicians who have a production machine minding role.

- a. An engineer supplied by an agency to act as a site based engineer to support the operation of the production line in either of the circumstances would fall within the scope of the scheme as the work is an integral part of the production process.
- b. An engineer supplied by a labour provider into the employ of the food processing company could be excluded under the specialist worker exclusion (provided all the criteria in the exemption are met);

- c. An engineer supplied by a labour provider or employed by a maintenance contractor who went to the processing plant to carry out repairs and servicing on an ad hoc basis would fall outside of the scope of the scheme;

7. Pet food / Animal Feed production

Pet food and animal feed production is covered by the licensing scheme as the food/feed will be made either from produce derived from agricultural work or from shellfish or fish products.

8. Tray wash operatives - work within a dispatch department not in the production area i.e. production operatives bring out dirty trays and take back clean ones.

These workers are covered by the licensing scheme because the activity, while not undertaken in the production area, provides clean trays on which the product can be moved from that area to the dispatch department.

9. Workers doing waste control activities in a food factory including collecting food waste bins and separating waste for recycling/animal feed/landfill.

Produce sold or used for any purpose, including animal feed, is consumable produce. Processing consumable produce is work to which the Act applies irrespective of whether it is for human consumption. Removing waste from a food production line is likely to be an integral part of the overall processing work and therefore in scope.

For workers who purely handle waste that goes to landfill outside the normal production line this will require more detail to confirm whether it is in or out.

10. Fish farming - including trout lakes

This is not normally regarded as falling within the scope of the definition of agriculture therefore it is not covered by the scheme. However, workers supplied to a fish processing plant on the same site are likely to fall within the scope of the scheme.

11. Abattoir/Slaughterhouse activity – Dressing of carcass post slaughter by licensed slaughterman and others.

The dressing of a carcass is covered by the scheme as it falls within s3 (1) (c) of the 2004 Act as the carcass is derived from agricultural work.

12. Production of food for airline catering meals / snacks

Para 1(b) of the 2006 Exclusions Regulations required that food delivered to the consumer be ready for consumption without further preparation. As most airline meals need to be reheated before they are served this type of food processing did not benefit from this exclusion.

Under the 2010 Exclusions Regulations the definition of a catering establishment has been refined so that in addition to the requirement that food must be in a condition to consume without further preparation, ownership of the food must pass directly from the producer to the consumer. Consequently labour providers who supply workers to companies which prepare food for airline passengers are likely to need a Gangmasters licence.



GLA13/8.5 Overseas Labour Providers Issues – Progress Report

18 January 2007

BOARD PAPER REFERENCE – GLA13/8.5 – Overseas Labour Providers Issues – Progress Report

Issue

1. This paper provides an update on progress with addressing the issues identified in Board Paper GLA12/8.7 for licensing labour providers based outside the UK.

Recommendations

2. The Board is invited to note this update.

Background

3. Board paper GLA12/8.7 identified a range of issues to consider when taking forward the licensing of labour providers based outside the UK. These issues were split between three categories: Policy, Operations and Other. This paper notes the latest position with these issues. A number of the issues are ongoing and will be discussed further with the Board members who have previously expressed an interest in helping to resolve them.
4. There is clear evidence that in many cases the exploitation of workers begins in the country of origin. It can take the form of unlimited job-finders' fees and inflated administrative charges for questionable purposes tied to high interest loans, and to misleading information on the available hours of work and the nature and conditions of employment. This is a significant and serious area of exploitation.

Policy

Issue 1

To determine whether an overseas agency is acting as a gangmaster or an agency

5. Section 4(2) of the Gangmasters (Licensing) Act 2004 states 'A person ("A") acts as a gangmaster if he supplies a worker to do work to which this Act applies for another person ("B").' There is no definition of "supply" in the Act. However, as the licensing scheme seeks to protect worker, the GLA interprets supply broadly to maximise protection.
6. Therefore, anyone involved in the supply of workers who is not directly employed by a licensed labour provider should be licensed in their own right. The GLA considers supply would include introducing workers to a labour provider and labour user by way of providing workers' CVs or completed application forms.
7. This means anyone based overseas (regardless of how they describe themselves) will need a licence if they supply workers direct to an end user or to another labour with the regulated sector. Therefore labour users and labour providers should be supplied workers from licensed overseas operators. This point has been promulgated to all licence holders and current applicants.

Issue 2

Whether a licence can be required in EU states where they have their own licensing regime?

8. The GLA is currently assessing the comparability with other Member States licensing systems. Initial findings indicate most do not match the rigour and effectiveness of the

GLA scheme. In light of this, the GLA position is that labour providers should apply for a licence even if they are licensed in their home country.

9. However, the GLA is considering how other Member States licences could factor into the GLA scheme. For example, exchanging information between the GLA and the relevant authority in another Member State. GLA officials have discussed this with the Lithuanian Government and further discussions with other Member States are planned.

Issue 3

Should we allow a period of grace for EU labour providers to come forward for licensing whilst we settle issues around the licences issued by other EU states?

10. While it is now an offence to act as a gangmaster without a licence and to make an arrangement with an unlicensed operator, it may be difficult to prosecute given the potential low level of awareness with labour providers based overseas and the unresolved nature of some of the issues identified in this paper.
11. The GLA is seeking to address the apparent low level of awareness through discussions with authorities in other countries as well as through contacting representative organisations. The GLA is communicating this message to UK labour users and labour providers who use overseas operators.
12. The GLA does not consider it appropriate to impose formal periods of grace for overseas labour providers. Those who need a licence should come forward immediately. While effective enforcement against unlicensed overseas operators may be difficult at this stage, this activity will increase accordingly as the awareness campaign takes effect.

Issue 4

Non UK practices for recruitment are incompatible with the licensing standards e.g. charging for work finding services

13. In assessing comparability between the GLA scheme and the systems in other Member States (see Policy Issue 2), the GLA is also seeking to clarify which conditions prohibited in licensing standards are permitted in other Member States. Where a particular restriction in the licensing standards is acceptable practice in another Member State, the GLA will need to consider how the standard should be applied. However, the GLA generally expects compliance with all the standards if they are applicable.

Issue 5

How to deal with overseas labour providers who supply directly to labour users in the UK?

14. The GLA will work with supermarkets to raise awareness labour users in their supply chain that any labour provider needs a licence irrespective of where they are based. This will be supported by communicating this message through press and media activities.
15. Policy Issue 6 summarises the current thinking for tackling overseas labour providers who do not come forward for licensing.

Issue 6

Prosecution Policy for overseas labour providers

16. There are practical difficulties with prosecuting unlicensed labour providers based outside the UK. The GLA will work with the authorities in the country in question to explore what options are available for taking action against unlicensed operators.

17. Notwithstanding the foregoing, it is important to note that the GLA will not hesitate to prosecute UK labour users who make arrangements with unlicensed overseas labour providers. This will be done regardless of any claims by the labour provider or their national licensing authority that they are exempt from the requirement to hold a GLA licence because they are registered or licensed in-country.

Operations

Issue 1

The application process

18. The applications received so far from overseas labour providers indicates that completing the application form does not present any serious obstacles. Therefore, at this stage, the GLA has not identified any need to make substantial changes to application process for overseas labour providers. Any difficulties in applying for a licence that may be experienced by an overseas labour provider will be handled on a case-by-case basis.

Issue 2

The application inspection process

19. Many overseas operators do not have an ongoing relationship with the worker – they only introduce them to a UK labour provider or labour user. Therefore, many of the licensing standards are not applicable. In conducting an application (and compliance) inspection, the usual interviews with workers are straightforward as they are UK based. The GLA can request all necessary records.
20. In the discussions with authorities in other Member States, the GLA is also exploring the options for co-operation and possible joint working for compliance and enforcement activities. However, agreeing and putting into place such arrangements may take time.

Issue 3

Developing relationships with overseas governments

21. The GLA has contacted the UK embassies in the countries who have the largest number of nationals working in the regulated sectors. The embassies have then facilitated contact with the relevant authority. GLA officials have so far met with the Lithuanian and Polish authorities. Further meetings are planned with other countries. Discussions have focussed on the issues outlined in this paper. The GLA is exploring how best to formalise arrangements for continuing co-operation with authorities in other countries (for example through MOUs).
22. As most overseas labour providers supplying into the UK are based in the EU, efforts have been focussed on making contact with authorities in the key Member States. However, contact may also need to be made with Russia and Ukraine.

Other issues

Issue 1

Whether the GLA will conduct business in other languages?

23. The GLA is preparing guidance for labour providers based outside the UK initially in Polish, Lithuanian and Latvian with additional languages to follow. This guidance is a compendium of the material already published.
24. Leaflets for workers has also been translated into Polish, Latvian, Lithuanian and Slovak.

25. The GLA will keep under review whether it is appropriate and cost efficient to provide other services in different languages.

Issue 2

The payment of fees

26. In processing applications from labour providers based outside the UK, the GLA accepts international credit transfers.
27. Board paper GLA12/8.7 noted concerns from overseas labour providers that the licence fee may be too high so many may not come forward. With this in mind, the impact of the fee levels on the number of overseas applicants will be monitored. However, it is important to have equity with the fee levels paid by UK based licence holders.