

GLA Application and Inspection Consultation

Post consultation conclusions and proposals

Executive Summary

1 The Gangmasters Licensing Authority (GLA) published a consultation document on 28 January, 2013 seeking views on possible changes to the GLA Application and Inspection process. The consultation closed on 22 March, 2013. This document sets out the GLA's conclusions, post consultation proposals, and identified areas for further work.

2 In reviewing the responses to the consultation exercise the GLA recognises the support from all areas represented by industry stakeholders and licence holders alike. It is encouraged by the support for its current approach, together with responses which suggest how it may alter its approach.

3 Taken together, the post consultation proposals set out in this document provide a package of measures that the GLA considers will ease regulatory and financial burdens on the compliant businesses, reduce the inspection burden on the GLA in low risk areas, and assist in the continuous development of a pressure for maintaining compliance. A key element of this approach will be an increase in the transparency of the status of a licence.

4 Key principles of reducing the burden of regulation consider how "earned recognition" and "co-regulation" can be implemented in a regulator's approach. The responses received to questions on "earned recognition" and on changes to the application inspection process suggest that "earned recognition" cannot be applied with assurance to the application stage, and that it can be considered with greater confidence when more is known about a licence holder (e.g. to increase flexibility at the renewal point).

5 It is evident from the breadth of support for the application inspection process that there are concerns that the removal of it may enable more unscrupulous operators to enter the market place and obtain a licence. Supermarkets are very supportive of the approach, and whilst the GLA recognises that the removal of the process might introduce the necessity of new procedures by the supermarkets and others, it is not the GLA's role to act as their Brand protector. Nonetheless, they remain concerned; as do others (e.g. BRC, ALP, ETI, TUC) that more work may still be required to enhance the basis on which the GLA may operate a risk based approach to determining whether an application inspection is required.

6 Reliance on the assessments from ethical audits, and other similar assurance processes in the supply chain may enhance the GLA's knowledge, and increase assurance where it determines an inspection is not required. However, the TUC point to the GLA's own experience that the Temporary Labour Working Group (TLWG) audits did not generate greater compliance. So concerns over the use of such reports from a self-regulatory or co-regulatory approach remain.

7 In reflecting on the Ministerial statement on the Red Tape Challenge (RTC) the GLA must focus on rooting out forced labour. If it is to reduce its inspection effort in any way, in the short or long term, it must be able to do so with confidence that the gateway to a licence does not become unprotected. If it does the credibility of the licensing regime will be impacted, and rogue operators will be able to secure a licence and exploit workers undetected. Therefore it is imperative that any proposals to rely on external audits occur only once those schemes have been reviewed, and

accredited so that they examine the issues of concern to the GLA. This may include the need to train and regularly update industry auditors on what to identify and report to the GLA. This obviously would present a resource and financial pressure for the GLA, and one which the GLA intends to explore further with the industry.

8 Positive outcomes from this consultation must be an increase in stakeholder engagement. The NFU has suggested that the GLA establish a working group to further consider possible indicators that would be reliable for "earned recognition". This would be a useful forum to assist in reviewing the strengths, weaknesses, and gaps, in any existing assurance and audit mechanisms, including SEDEX, which the GLA may wish to rely upon once they are accredited as covering, and being capable of detecting, worker abuse.

9 Others, such as ALP and REC, refer to their own audit tools as being beneficial to assessments of compliance. The GLA is conscious that it cannot and should not appear to sponsor particular products. And no audits can give a cast iron guarantee that the GLA will not identify significant non-compliances that result in the refusal or revocation of a licence. Additionally compliance tests were suggested, but dependant on the structure of such mechanisms over time they may not be reliable indicators of compliance. Nonetheless, this may be an area worthy of further examination. So too may the suggestion of ensuring applicants hold an appropriate qualification as a pre-requisite before applying. This suggestion has parallels to the approach to licensing of the Security Industry Authority, where, for example, door supervisors have to hold a qualification in door supervision, as well as clean criminal records checks, before being granted a licence.

10 Therefore, whilst there are a number of proposals that the GLA considers can be implemented as "quick wins" (subject to supporting IT infrastructure) others will require additional analysis. Enhancements to intelligence sources, accredited audits, and qualifications may improve industry compliance, and stakeholder assurance, also enabling the GLA to assess risk at a level of greater granularity, reducing inspection burdens over time. Nonetheless, the GLA considers that some changes to the inspection process can be implemented now, and that other proposed changes can also be implemented to assist further changes to the application inspection process.

11 Changes to the inspection process, where the GLA identifies that some applicants will not require inspection inevitably leads to consideration of the continuation of the application inspection fee. If some applicants do not undergo an application inspection it would not be appropriate to charge an application fee to them. However, it may not be apparent at the initial application stage whether an inspection will be required. Consequently, some applicants may then be advised they must undergo an application inspection, and pay a fee. They may assume that there is some risk indicator that warrants this requirement and that there is an increased likelihood that their application will be refused whilst having to pay a non-refundable fee to reach that decision. They may not be willing to take that financial risk, particularly during a recession, and so withdraw their application. In such a scenario the GLA's approach would be a barrier to entry to the market and to economic growth. Consideration of removal of the fee requirement must therefore be considered for all applicants (as in the easement introduced in the Forestry pilot). The approach to be implemented will be dependant on the extent to which the application inspection requirement may be eased.

Post consultation proposals

12 The post consultation proposals are divided into sections aligned to the structure of the consultation report's sections as follows:

- Introductory section
- Application and inspection process
- GLA licence renewal process
- The public register and the active check process

1 Introductory section

- Q1. Do you agree that the GLA should adopt a risk based approach to determine whether an inspection is required on receipt of an application?**
- Q2. Are there any specific situations in which you consider an inspection of an applicant should always be required?**
- Q3. Do you think there are any specific situations in which an inspection of an applicant should never be required?**

1.1 The majority of respondents did not support a move to risk based inspection. Suggestions were made on those situations which respondents always considered required a licence, as well as a smaller number on those situations that were considered not to warrant inspection. The GLA considers that some changes are possible in the immediate term, and that this presents an opportunity to segment the way in which new applicants may be reviewed: those that always require inspection; those that should be discretionally referred for inspection by licensing; and those that should not require inspection. Specific examples under each category are provided below.

1.2 Always inspect

- An application from a previously refused or revoked labour provider, or someone identified as previously linked to such a labour provider
- Adverse Government check information, or where no information is held on the company or individuals on the application
- Any Umbrella company or dedicated Travel and Subsistence scheme operator, and labour provider identified as operating such in-house schemes or using such companies
- New applications from labour providers who previously held a licence, where 6 months + have elapsed since the expiry of the previous licence
- New start up companies which have not traded before in any sector

1.3 Discretionary inspection

1.4 Decisions on whether an inspection may be required will be determined by the licensing team in the circumstances set out below. This decision will be made after the completion of the all Government checks.

- Inaccuracies on the application form that cannot be resolved by direct liaison between licensing and the Principal Authority

- An application following a re-structure, where an existing licence is held, is compliant, where outstanding tax/NI debt is identified, and no "time to pay agreement" is in place
- Where an applicant had a tax dispensation that has been revoked, or is under review, or has had to make a cash security deposit to HMRC
- New applications from labour providers who previously held a licence, where 1-6 months have elapsed since the expiry of the previous licence
- Random inspection on 10% of those applications that fall within the "no inspection" category or "discretionary inspection" (which were not selected for inspection on those criteria)
- Applicants that are trading in other industry sectors, especially where a different operational model may be adopted outside the regulated sector to that proposed for the regulated sector

1.5 No inspection (subject to random selection for inspection)

- An application following a re-structure, where an existing licence is held at the time of application, is compliant, where **no** outstanding tax/NI debt is identified
- A new division or branch of a compliant licence holder company that applies for a licence for that division whilst continuing to operate the initial licensed company as a going concern
- An application accompanied by an audit report provided by a GLA accredited scheme (see "earned recognition" section), that is independently verifiable, together with details of any identified problems, and confirmation of resolution
- New applications from labour providers who previously held a licence, where less than 1 month has elapsed since the expiry of the previous licence
- Where clear evidence of current or recent non-compliance and/or criminality exists on which to consider refusal without inspection

2 The application and inspection process

Q4. Do you consider the list of current Government organisations consulted by the GLA is adequate, or do you think that the GLA should seek information from other organisations? If so, please indicate which organisation(s) you consider appropriate?

Q5. What information do you believe the GLA should be seeking from OGDs or other organisations?

Government information

2.1 A number of suggestions were made in terms of Government checks that ought to be carried out. Some of these currently occur, whilst work is already underway in respect of others. The GLA did not wish to include that information within the consultation so as to enable respondents a “blank sheet” approach to providing their views.

2.2 Ad-hoc enquires occur currently with the Office of the Immigration Services Commissioner (OISC) but experience suggests this has not delivered significant intelligence

2.3 Standard checks are run with UKBA, and increasing contact with UKHTC in relation to victim referrals occur, as do appropriate checks with the police and SOCA, based on information held by the GLA. Where the applicant is an overseas labour provider the GLA will utilise existing contacts with overseas labour inspectorates to identify whether such applicants are compliant with their domestic labour law. However, this is an area where further work is required, due to the fluid nature of changes in contacts. Checks are also currently conducted with Companies House.

Further work:

2.4 The GLA is currently working on improved information exchange with the Insolvency Service. It considers that the Insolvency Service may be a good source of information to include at the application stage Government check in every case. Similarly the GLA will consider whether to explore a similar relationship with VOSA where case-specific information requests exist currently.

2.5 It has also been suggested that the GLA checks Employment Tribunal decisions. Whilst Employment Appeals Tribunal decisions are published on a searchable database¹, decisions of the lower tier tribunal are not. The database will serve as a useful source of information. However it will be essential to ask applicants whether they have been subject to Employment or Employment Appeals Tribunal cases, and if so the reference, outcomes, and court location. It should also then be an ongoing requirement to notify the GLA if the licence holder is subject to such proceedings in the future. Any failure to notify the GLA regarding judgements against a licence holder may then require licence review on the grounds of “fit and proper”.

¹ See: <http://www.justice.gov.uk/tribunals/employment-appeals/judgments>

2.6 This proposal will require further examination, and additional fields on the application form.

2.7 Receipt of criminal history information has also been proposed. It could be a requirement of a licence that a Principal Authority, and any named or alternative business representatives, obtain and submit a criminal disclosure at their own cost. An individual can obtain a record themselves by approaching Disclosure Scotland²

Non-Government Organisations – further work:

2.8 Two proposals suggested REC audit reports and reviews conducted by the Freelance Contractor Service Association (FCSA). However, consideration of the value of any external audit to provide assurance and reduce the necessity of inspection, whether at application or after the grant of a licence, within “earned recognition” is considered further under the “earned recognition” section (see below).

2.9 Unite also suggested information from trades unions. The GLA expects to receive information from Trades unions where they discover alleged exploitation of labour. That can then assist in informing whether an inspection may be required at any stage of the life cycle of a licence and its review. However, the GLA does not proactively seek information on every new applicant from a trades union in the same way as it does with Government Departments. Nor does the GLA consider that the trades unions would hold information in a similar manner, to the same evidential test, as Government Departments which may have secured civil or criminal sanctions against an applicant for a GLA licence. However, the GLA is open to further discussions to complete a proposal it put forward some time ago for the introduction of a trade union protocol. The purpose of this agreement would be to establish the ways in which the GLA can legally work with trades unions, and how it expects information to be provided to assist the GLA in its intelligence collation and investigative activity.

2.10 REC suggested CAB information, which has been raised previously, and which requires a fresh review. This may include discussions with CAB on what information the GLA requires, to enhance the GLA’s collation of information, and identify high risk cases.

Suggested types of information

2.11 The responses to the consultation (see summary of responses paper) provided examples of information that the GLA should consider. The majority of those suggestions specifically related to information that could be provided by organisations suggested as new intelligence sources.. For example, this included criminal histories and employment tribunal decisions. It also included information from HMRC regarding cash security deposits, which is information provided in response to the current HMRC Government check, albeit not in response to a direct licensing standards related question.

² Disclosure Scotland – basic check, current cost £26, turn around time approximately 14 days: <http://www.disclosureScotland.co.uk/apply-online/>

2.12 Other suggestions would require amendments to the current application form, to, for example, ask applicants whether they operated a travel and subsistence scheme, used an umbrella scheme, held a revocation, and agreed to advise the GLA of any such change in the future.

2.13 Another suggestion was to request references from accountants, labour users or other labour providers. The value of a reference from a labour user may be valuable to increase assurance if it related to the results from an audit it undertook, which met the requirements of the GLA (see “earned recognition” below). References from other licensed labour providers may warrant further consideration, where a reference from a licence holder with a long compliance history acts in a similar manner to the counter-signatory requirements on a UK passport application³. However, such a scheme in support of new applicants might only operate with assurance if the references on their behalf, to indicate compliant behaviour, were from existing licence holders who had earned longer licences, and could carry a penalty if a sponsored applicant was subsequently found to be exploiting (e.g. loss of licence, or extended licence privileges). This may act as a disincentive and is therefore unlikely to warrant further consideration by the GLA.

2.14 It was also suggested that all details, bank details, and all previous work locations be required. However, this proposal runs contrary to the principles of risk, being intelligence-led to determine inspection requirements, and also contrary to the “Hampton principles” on reasonable requests for information (see recommendation 16)⁴. For this reason this proposal is not considered further.

2.15 It is expected that other proposals will be developed further in relation to information exchange with the insolvency Service and access to Companies House information.

³ See counter-signatory guidance - <https://www.gov.uk/countersigning-passport-applications>

⁴ See Hampton report, Annex D, page 117 - <http://www.bis.gov.uk/files/file22988.pdf>

3 Earned recognition

Q6. What documents do you consider the GLA should seek in place of an application inspection, which may also assist in determining whether an inspection should occur (which may include industry audits)?

Q7. What controls do you consider are necessary to ensure that an objective and reliable assessment of compliance can be made, including an assessment of the competency of the Principal Authority?

3.1 29% of respondents to questions on “earned recognition” opposed it on the grounds that there should be no move away from the use of application inspection. It is clear from responses, and discussions within the regulatory community, that the concept of “earned recognition” is not universally understood, nor interpreted in a single approach. The question of whether the concept of “Earned recognition” can be applied needs to be considered both in terms of the application and ongoing compliance stages.

3.2 The responses regarding application inspections clearly indicate a continuing concern over rogue operators entering the licence system unchecked particularly where there is nothing known about an applicant, and which should not be treated as indicating that there is no potential risk. If there is little or no information known about an applicant a qualitative risk based judgement cannot be formed. As recommended in the Hampton report:

“Regulators, and the regulatory system as a whole, should use comprehensive risk assessment to concentrate resources on the areas that need them most; ..”⁵.

3.3 It therefore follows that where no or limited information exists a greater risk and need for more information occurs. That requires consideration of an application inspection to plug that knowledge gap, and is as equally important as inspections where non-compliance is indicated from information received. Consequently, in line with the view provided by FPC, “earned recognition” cannot be applied “where there has been no past record of compliance...”. TUC also pointed out that the TLWG audits were not considered as reliable indicators of compliance, with the benefit of hindsight, and GLA re-examination, compared to the GLA’s initial reliance on them to assist in rapid expansion of the licensed community. However, despite that identified weakness, if industry audits can be assessed as reliably assisting the GLA in discharging its functions, specific audits might enable a reduction in application inspections in the longer term. Therefore the GLA proposed a continuation of application inspections in specific circumstances (see above), but is proposing further examination of industry audits.

3.4 In order to develop this work and consider whether industry audits can assist as a co-regulatory approach to build knowledge to be considered as “earned

⁵ See Hampton report, Chapter 2 “Assessing Risk”, principles of regulatory enforcement, paragraph 2.92, Box 2.2 - <http://www.bis.gov.uk/files/file22988.pdf>

recognition" and reduce inspection burdens where appropriate, with assurance, the GLA will:

- Establish a review group, consisting of stakeholders, operating or using ethical audits to provide assurance within the supply chain
- Review the areas examined, method of examination, outcomes, and procedures to confirm corrective action
- Identify gaps where such audits might need to consider how to evidence worker exploitation, and reporting potential victims to the GLA
- Consider the establishment of an accreditation process of approved audit schemes and auditors that meet the GLA's minimum inspection requirements (including reviews of those schemes and auditors, and de-accreditation)
- If implemented, provide regular workshops to the accredited community to maintain and raise their awareness of trends, and what evidence to request

3.5 Such an approach would benefit from support from the supermarkets and supply chain. The GLA considers that support for the revised supermarket and supply chain protocol will assist in the development of this proposal.

3.6 The GLA considers that the evolution of such a process will enable greater confidence, and a shift of applications into the "discretionary" or "no inspection" categories in the longer term, thereby enabling "earned recognition" at the front-end.

3.7 "Earned recognition" for labour providers who establish a licence history is less problematic. Knowledge from inspections, and Government checks, is informed by further information over the period of a licence which determines risk and whether re-examination by compliance inspection is a priority. It is recognised that an absence of further information may not always be indicative of a continuing compliant approach. It may represent an organisation that has hidden evidence of non-compliance. For this reason it is also important that a random element of cases without any indication of non-compliance be selected for an inspection. The inclusion of a random element of inspection is essential to create a continuous review of risk within a regulatory community, and create a deterrent pressure to maintain compliance. This was also recognised in the Hampton report⁶.

3.8 The GLA's proposals on "earned recognition" for licence holders with a history of compliance are contained in the next section on renewal processes, and the public register. Those proposals reward established and continuous compliance, reducing financial and inspection burdens over time. However, once earned such privileges are coupled with the responsibility to remain compliant, and that those privileges may be removed if compliance is not maintained, and for that change to be published on the public register.

3.9 This approach is supported by comments received which suggest greater support for self-declaration of changes and identified non-compliance, particularly where a rogue individual is identified as circumventing and abusing internal controls to exploit workers. They argued that where a labour provider did not inform the GLA of such changes that they should face harsher penalties – the greater reward of "earned recognition" might lead to an increased risk of revocation for a failure to

⁶ see Chapter 2, paragraph 2.31, page 37.

comply. That view echoes the consultation assessment that the “trade-off” for allowing longer licences might be: “... taking a more critical approach to non-compliance, increasing the risk of revocation, where non-compliance is identified. For example, this could result in a process where the GLA may be inclined towards revocation ...”⁷.

3.10 Conversely, where a labour provider identified the activities of a rogue operator, enabling the GLA to take action, and where the ability of that rogue operator to function did not result from negligence by the licence holder, the GLA should take a proportionate response to the licence holder if it is operating in a compliant manner in all other respects. This encourages reporting to the GLA, which may assist in uncovering forced labour offences, and provides recognition for that openness.

3.11 Random inspection would be used as a tool that supports the development of an “earned recognition” approach. It is proposed that it is applied to a sample of licence holders who have held a full licence continuously for more than two years. As an example 10% of all full licence holders who have held a licence for more than 2 years, and have not been inspected in the preceding 2 years would be included in the data set for selection.

3.12 In response to question 7 no further information was provided other than that provided in response to questions 4 and 5.

⁷ Consultation document, section 4, scenario 2, paragraph 4.17 - <http://gla.defra.gov.uk/PageFiles/923/Application%20and%20Inspections%20Consultation%2028%20January%202013.pdf>

The GLA licence renewal process

- Q8. Do you think the renewal process should remain annual or that longer licensing periods should be contemplated?**
- Q9. Do you agree that those labour providers who demonstrate a longer history of compliance should have longer licences? If so:**
- (a) what do you consider the maximum length of such licences ought to be?**
- (b) what additional controls/checks, if any, do you consider appropriate?**
- Q10. Do you consider that the renewal process should be removed altogether? If so, what additional controls/checks, if any, do you consider appropriate?**

4.1 Based on the support for retaining the renewal process and longer licences the GLA considers that the following approach should be implemented:

4.2 Licence length

- 1 Longer licences will be issued for licence holders with a history of compliance
- 2 The maximum length of licences will be 3 years
- 3 An incremental approach to longer licences will be adopted, for compliant labour providers
- 4 Any licence holder who is in their first year will renew at the anniversary of the issue of the licence for a further year until they have completed two full years of holding a full licence
- 5 If a licence holder has ALCS at the end of the second year they will need to clear the ALCs, and therefore be allowed to renew for a year, before they can be considered for a longer licence.
- 6 Current licence holders with a licence history of longer than 2 years will move to a 2 year licence, at their renewal point, once the new approach has been implemented
- 7 Licence holders who move to a two year licence (following the period identified in point 4 above) will move to a three year licence, subject to continuous compliance, at their next renewal point

Length of licence	New applicant	Full Licence held for 1 year	Full Licence held for 2 years	Extend Full Licence held for 2 year period	Extend Full Licence held for 3 year period

Moves to	1 year licence	1 year licence	2 year licence	3 year licence	3 year licence
-----------------	----------------	----------------	----------------	----------------	----------------

- 8 Identified non-compliance will lead to proportionate forfeiture of the right to a longer licence, and such "earned recognition" will need to be re-built by continuous compliance after areas of non-compliance have been satisfactorily addressed

Length of licence	ALC imposed in Year 1	ALC imposed in Year 2	ALC imposed in Year 3
1 year	Renew for 1 year		
2 year	Revert to 1 year licence after elapse of 1 year, requiring renewal at that point	Revert to 1 year licence at the scheduled renewal date	
3 year	Reverts to 2 year licence after elapse of 1 year, requiring renewal at the end of the second year	Reverts to 2 year licence after elapse of 2nd year, requiring renewal at that point	Reverts to 2 year licence at the scheduled renewal date

4.3 Additional checks

- 1 OGD checks to be re-run for licence holders who become eligible for 2, then 3, year licences (NB: these would need to be issued in advance of the renewal date to enable review in case non-compliance was identified, that would affect whether a licence would receive an extended period)
- 2 Development of a self-assessment/declaration to confirm details, including details of existing labour user clients
- 3 Inspection to be considered for identified OGD issues, failure to report changes, and a random selection of those licence holders with two or three year licences during the licence period.

Further work

4.4 The GLA will produce analysis on the impact of re-running OGD checks for the OGDs, where licence holders become eligible to move to a two year and three year licence.

4.5 Additionally, the GLA will consider what impact this change may have for the existing licence and renewal fee structure

5 The Public Register and the Active check process

Q11. Do you agree that the Public Register should be enhanced to include:

- (a) details of ALCs and, if so, list the specific areas of non compliance by reference to the standards?**
- (b) labour providers whose status has changed to “revoked without immediate effect”?**
- (c) businesses that are formally revoked and, if so, for how long should these details be displayed?**

Q12. Do you agree that the active check process should be enhanced to provide greater detail of changes to a licence status, and which may appear on the Public Register?

5.1 Based on responses to the questions on the content of the public register, and the active check process, the GLA considers that the following approach should be implemented:

5.2 Public Register

- 1 Enhance the content of the Register to identify those labour providers who have ALCs, and what those ALCs are. This will introduce a greater pressure to clear ALCs, which, in turn need to be addressed in order to benefit from longer licence periods.
- 2 Include the date of the last inspection, and number of continuous years of holding a full licence (i.e. from the date of licence, or removal of the last ALC)
- 3 Show the following status on the register:
 - Appealed
 - suspended
 - Revoked
 - Refused
- 4 Where a status changes to revoked or refused it will remain on the public register for a fixed period to enhance the information available to labour users
- 5 The new status of suspended will be used where there is an urgency in preventing a labour provider from trading to ensure protection of workers from continued exploitation
- 6 The status will appear as revoked where:
 - The revocation is with immediate effect

- No appeal has been received in a decision to revoke without immediate effect
- The decision is confirmed following an appeal decision

5.3 Active Check

- 1 Introduce new active check notifications where the status on the public register changes
- 2 Ensure such active check notification templates provide clear advice on the change in status that has occurred

Further work

5.4 A number of respondents indicated that, though they supported enhancements to the public register, they considered the changes should only be publicly visible when a GLA decision was confirmed by an appeal ruling. This was also the concern presented by the respondent labour providers that opposed the changes to the register.

5.5 The GLA recognises these concerns. However, it equally recognises the concerns of the compliant sections of the licence holder community to assist in creating a level playing field that supports economic growth for those who play by the rules. The GLA considers it is inequitable that a compliant labour provider may lose out in a competitive tender to another licence holder whose licence has been revoked without immediate effect, because that status allows the second labour provider to trade legally, with the public register simply stating "licensed". The GLA considers that in the interests of transparency, and encouraging the labour user community and supply chain to co-regulate labour providers more openness is required. Therefore, it will consider further whether the "revoked without immediate effect" status should appear publicly on the register. If it concludes that there is further merit in this approach it will bring those proposals to the GLA Board for decision on whether to implement.