



Gangmasters
Licensing Authority

GLA38/10

**GLA Consultation
Proposals**

17 July 2013

BOARD PAPER REFERENCE – GLA38/10– GLA CONSULTATION PROCESS**1. Purpose of the Report**

- 1.1 This report provides an update on the conclusions of the GLA consultation process, and data reviewed based upon feedback from the Board on 17th April 2013. The proposed changes are broken down into 5 strands, with detail provided in Annex A, in respect of each proposal.
- 1.2 In particular, the paper re-analyses whether an application inspection would be required against a criteria driven approach, segmenting the cases into those requiring a mandatory inspection, and those which may require an inspection at the discretion of the GLA. This also enables a projected risk factor to be identified. This is covered in Annex A.
- 1.3 Annex A also provides an indication of the resource time efficiency savings where inspections may not occur, and the opportunity saving in terms of staff resources that could be re-deployed to serious and organised cases of exploitation.

2. Recommendation

- 2.1 It is recommended that the proposed changes are accepted for implementation (implementation dates being subject to the necessary supporting IT changes).

3. Reasons for Recommendation

- 3.1 To meet the requirements of the "Red Tape Challenge Written Ministerial Statement" (RTC WMS) on changing the approach of the GLA.
- 3.2 A copy of the RTC WMS can be found in Annex 1 (page 19) to the [GLA consultation paper](#).

4. Summary of Key Points

- 4.1 The key points are:
 - Application Inspection: new criteria will be adopted which will identify those cases that will require an inspection, and those where discretion may be applied – (see Annex A for details of the criteria, and projected inspection rate, based on the proposed criteria)
 - Renewal: longer licences with reminders to licence holders, and reduced fee requirements (Annex B)
 - Earned Recognition: to develop supply chain accredited audits to enable a "licence to operate" whilst other checks are completed (Annex C)

- Public Register enhancement: to show cases with ALCs (with details), and retain information on revocations within the register for a period of 3 months, with related changes to the active check process (Annex D)

5. Financial Implications and Budget Provision

- 5.1 Efficiency benefits arising from changes to the application inspection process are set out in Annex A. Changes to the renewal process may reduce the overall resource time expended the licensing team on renewal activity. Such released resource time can then be re-deployed to those applications that may require further examination by the licensing team but not necessarily require physical inspection by visit (the discretionary inspections).
- 5.2 Proposals for supporting and enhancing supply chain audits will need to be cost neutral for the GLA.
- 5.3 There is no budget provision for IT enhancements, which will require discussions with Defra and budgetary review.
- 5.4 Discussions of the financial impact of the changes to the licensing arrangements have not yet concluded. There is a risk that any reduction in renewal fee income may reduce grant in aid to the GLA consequentially adversely impacting its operating budget.

6. Risk Management

6.1

6. Risk Management

- 6.1 The GLA will continuously review its approach to enable it to recognise and mitigate against any new and emerging strategic and operational risks which may affect delivery of working in partnership to protect vulnerable and exploited workers.
- 6.2 The proposals and recommendations take full cognisance of the Government regulatory agenda.
- 6.3 A risk of organisational reputation exists if, upon delivery of the proposals, single source intelligence, or unprovenanced intelligence is acted upon without due consideration. A revised risk management approach is being created which will ensure that all decisions are based on live and accurate information and intelligence and ALL subsequent decisions are proportionate, lawful, necessary, justified and relevant.
- 6.4 This approach will also ensure changing local, national and international labour market trends are identified at an early stage in respect of organisations that may exploit workers from recent accession states, or those that have just acceded.

- 6.5 Risks to the organisation from legal challenge, resulting from the implementation of these changes, are considered minimal due to the consultation process adopted and the process of obtaining legal advice in specific circumstances (e.g. in cases of revocation without immediate effect).
- 6.6 There are some financial risks linked to the adoption of the proposals in respect of reduced revenue resulting from extended licences. The full detail of this and its effects have yet to be calculated.

7. Policy Implications and Links to Strategic Priorities

- 7.1 The approaches proposed support the single strategic aim, priorities and objectives of the GLA which includes an increased focus on serious criminality but also maintains an approach that detects and prevents the greatest risks of non-compliance from entering the regulated sector.

8. Details of Consultation/EQIA

- 8.1 This paper follows the GLA's consultation process and partial EQIA review.

9. Background Papers and Relevant Published Documents

- 9.1 GLA consultation:
<http://gla.defra.gov.uk/PageFiles/923/Application%20and%20Inspections%20Consultation%2028%20January%202013.pdf>

<http://gla.defra.gov.uk/PageFiles/1111/GLA%2037%208.2%20GLA%20Consultation%20changes%20to%20Application%20and%20Licensing%20ProceduresdOC>
<http://gla.defra.gov.uk/PageFiles/1111/GLA%2037%208.2%20Post%20consultation%20conclusions%20>
<http://gla.defra.gov.uk/PageFiles/1111/GLA%2037%208.2%20Summary%20of%20Responses.pdfand%20proposals.pdfpdf>

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Annex A Application Inspections

A1 The GLA reviewed the available data on potential application inspections against the following criteria suggested by the Board in April 2013 against the categories of 'always inspect' (mandatory) and discretion to inspect.

A2 There are two options presented below: Option 1 – Post Board proposals; Option 2 – revised proposals based on data review.

Comparison of analysis in consultation paper against current review

A3 The previous analysis, conducted for the GLA consultation, considered the volume of applications with adverse OGD checks or intelligence checks. This gave an indicative level of risk of, on average, 27% (consultation paper, Appendix 3, table 3), requiring an inspection rate (including a random element of 10%) of 25-33% (consultation paper, Appendix 3, paragraph A 3.11).

A4 That rate was reached by analysis of those cases with and without adverse information against the application inspection outcome. The aim was to identify whether the indicative potential non-compliances featured in the end result, and if so, what the frequency was. It therefore took a **quantitative** approach to the analysis to determine from the indicative risk what the actual level of risk would be projected to be.

A5 The GLA April 2013 Board discussion proposed that three year data be provided in relation to the actual numbers of inspections applied for, in all the categories that the GLA accepts (i.e. all the categories listed under always inspect and discretion to inspect in Option 1). In doing so, this approach is a **qualitative** review against the specified criteria, focusing on the indicative risk, and not whether there was a correlation between the indicative risk based on the criteria and the licence outcome (as per the 2012 analysis).

A6 As this qualitative review incorporates, as its starting point, those cases with a negative OGD response, it means that the reviewed data would include the volumes identified in the quantitative review, providing an initial 31% inspection level (consultation paper, Appendix 3, table 1).

Option 1 Criteria**Table 1: Proposed criteria for mandatory and discretionary inspections**

Mandatory inspection	Discretionary inspection
<ol style="list-style-type: none"> 1. Previously refused or revoked licence holder, or someone identified as previously linked to that business 2. Adverse Government check information or adverse intelligence 3. Where no information is held on the company or individuals on the application 4. Application form inaccuracies unresolved by direct liaison with the Principal Authority 5. Start-up companies which have not traded before in any sector 6. Umbrella companies, overseas intermediaries or dedicated tax relief scheme operators, and labour provider identified as operating such in-house schemes or using such companies 7. Where a tax dispensation has been revoked or is under review; outstanding tax/NI debt is identified; a cash security deposit to HMRC is required or a "time to pay agreement" exists 	<ol style="list-style-type: none"> 1. Where clear evidence of current or recent non-compliance and/or criminality exists on which to consider refusal without inspection 2. New applications by the same legal entity, where less than 6 months has elapsed since the expiry of their previous GLA licence 3. A new legal entity which at the time of application proposes to replace the existing compliant licence holder as a going concern, for business reasons accepted as legitimate and where no outstanding tax/NI debt is identified 4. A new legal entity set up for business reasons accepted as legitimate, by a compliant licence holder whilst continuing to operate the initial licensed company as a going concern 5. Applicants with a clean history of trading in other industry sectors that supply evidence of compliant operation including an independently verifiable GLA accredited scheme audit report with details of any identified problems and confirmation of resolution 6. Land Agents/ ATAs/Forestry (*retained for illustration)

Data used

A7 The consultation paper analysed data for the three financial years 2009-10, 2010-11, and 2011-12 as it was produced during the 2012-13 year using the quantitative methodology. Whereas this review has been completed using the qualitative data and proposed inspection criteria, after the completion of the 2012-13 financial year. Therefore, the review against the criteria has used data from 2010-11, 2011-12, and 2012-13.

Analysis

A8 An analysis of the volume of applications in the last 3 financial years against the proposed criteria produces the following picture:

Table 2: Review of AIs (2010 – 2013) against proposed criteria (table 1)

Year	Number of applications received	AI - Always inspect	AI - Discretionary Inspection
2010-2011	219	136(62%)	83 (38%)
2011-2012	218	132 (61%)	86 (39%)
2012-2013	130	64 (49%)	66 (51%)
	567	332 (59%)	235 (41%)

A9 The application level in column 2 excludes all cases where the application was cancelled, and reflects the level that would currently result in inspection.

Table 3: Analysis of outcomes for the potential discretionary cases

Actual outcome for the applications that would not have received an AI if the GLA moved to risk based inspections	10/11	11/12	12/13	Total
Full licence	66	78	59	203
Licence with ALC	10	6	5	21*
Refused	6	3	2	11*
	82	87	66	235

A9 This provides an increased risk factor of 5.6% (*32/567).

Option 2: Revised criteria proposal

A10 However, further consideration of the proposed criteria suggests that some of the “always” criteria could effectively be dealt with internally by the licensing team at the GLA Head Office. This would follow the current model for examination of those applicants/licence holders that operate travel and subsistence schemes or use umbrella companies, where initial analysis and enquiry is conducted from the licensing team exercising section 16 powers.

A11 An amended set of criteria and the impact on indicative volumes always requiring inspection is set out below.

Table 4: Revised division of criteria (table 1 amended)

Mandatory Inspection	Discretionary inspection
<ol style="list-style-type: none"> 1. Previously refused or revoked licence holder, or someone identified as previously linked to that business 2. Adverse Government check information or adverse intelligence 3. Where no information is held on the company or individuals on the application 	<ol style="list-style-type: none"> 1. Where clear evidence of current or recent non-compliance and/or criminality exists on which to consider refusal without inspection 2. New applications by the same legal entity, where less than 6 months has elapsed since the expiry of their previous GLA licence 3. A new legal entity which at the time of application proposes to replace the existing compliant licence holder as a going concern, for business reasons accepted as legitimate and where no outstanding tax/NI debt is identified 4. A new legal entity set up for business reasons accepted as legitimate, by a compliant licence holder whilst continuing to operate the initial licensed company as a going concern 5. Applicants with a clean history of trading in other industry sectors that supply evidence of compliant operation including an independently verifiable GLA accredited scheme audit report with details of any identified problems and confirmation of resolution A 6. Application form inaccuracies resolved by direct liaison with the Principal Authority 7. Start-up companies which have not

	<p>traded before in any sector</p> <p>8. Umbrella companies, overseas intermediaries or dedicated tax relief scheme operators, and labour provider identified as operating such in-house schemes or using such companies</p> <p>9. Where a tax dispensation has been revoked or is under review; outstanding tax/NI debt is identified; a cash security deposit to HMRC is required or a "time to pay agreement" exists</p> <p>10. Land Agents/ATAs/Forestry (*retained for illustration)</p>
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A12 By applying the revised criteria (table 6) to the data in table 2 the proportion of applications that may require an inspection by visit reduces as illustrated below:

Table 5: Review of AIs (2010 – 2013) against revised criteria (table 6)

Year	Number of applications received	AI - Always inspect	AI - Discretionary Inspection
2010-2011	219	102 (47%)	117 (53%)
2011-2012	218	99 (45%)	119(55%)
2012-2013	130	(36%)	83(64%)
	567	248(44%)	319(56%)

A13 If the outcomes for the revised criteria for 319 discretionary inspections is reviewed the following position occurs:

Table 6: Analysis of outcomes for the potential discretionary cases

Actual outcome for the applications that would not have received an AI if the GLA moved to risk based inspections	10/11	11/12	12/13	Total
Full licence	88	99	66	254
Licence with ALC	15	11	9	35*
Refused	13	10	8	31*
	116	120	83	319

A14 The impact on outcomes provides a revised risk factor of 11.6% (35+31/567).

Resource Impacts

A15 If the discretionary approach resulted in lower levels of inspections, but with continued assurance, due to the approach adopted within the licensing team, there would be some resource savings.

Human Resource saving

A20 Options 1 and 2 provide potential savings for re-deployment where discretionary inspections may not be operated. Where that occurs those resources will be re-deployed onto high risk criminal and serious non-compliance cases. This supports the red tape challenge written ministerial statement. In each case there is not an efficiency saving leading to a reduction in staffing. Each represents an opportunity benefit enabling the saved resourcing time to be re-deployed as above. In addition, there is the potential reduction in travel and subsistence costs, which are calculated, based on an average per inspection levels.

This "saving" is projected to be:

Option 1

Median (50% of discretionary cases require inspection)

Staff costs 118 x 1.2(inspectors, where 0.2 represents the average need for two inspectors) x 5 staff days (40 hours) = 708 staff days @ 220 inspector days/year = 3.2 years

Option 2

Median (50% of discretionary cases require inspection)

Staff costs 160 x 1.2(inspectors, where 0.2 represents the average need for two inspectors) x 5 staff days (40 hours) = 960 staff days @ 220 inspector days/year = 4.4 years

Conclusion

A21 Applying the proposed criteria would produce an indicative inspection rate of 59% to 100% (i.e. plus 41% if all discretionary inspections were undertaken) for option 1. Comparatively, Option 2 potentially reduces the inspection level to between 44% and 100% (i.e. plus 56% if all discretionary inspections were undertaken) with increased opportunities to save non-staff costs, and re-deploy staff onto serious criminal and non-compliant activity.

A22 Whilst Option 1 presents a lower risk factor (5.4%) than Option 2 (11%) this risk is considered manageable in view of the analysis that will be applied in discretion cases by the licensing section.

A23 It should also be noted that, in either option, the extent to which any discretionary criteria are met, and are considered to require an inspection removes the requirement for random inspection.

A24 Finally, monitoring by licensing on the effectiveness of desk based control over the discretionary criteria will assist in sensitising the discretionary criteria, reporting to the Board on the actual number of inspections required under the "always" or "discretionary" data sets.

A25 **Recommendation: That the Board agrees to the implementation of the Option 2 criteria and projected inspection approach.**

Annex B Extended licences

Further work has been undertaken on the current licence population to model likely levels of licence holders who may benefit from two and three year licences. This has taken account of:

- Projected new applications
- Volumes that cease to trade
- Likely impact of ALCs
- Revocation trends

It does not reflect volumes by fee band, and is therefore not modelled at that micro level.

Volumes

Forecast - ALC / revocation/ceased trading applied							2.95%
length of licence	Apr-14	Apr-15	Apr-16	Apr-17	Apr-18	Apr-19	Apr-20
1 year licence	189	103	103	103	103	103	103
2 year licence	197	238	183	100	100	100	100
3 year licence	500	593	697	831	880	930	980

Note: assumes that those LPs with a history of at least 2 years compliance history at April 2014 would move a longer licence, and LPs with at least 4 years compliance history would progress to a 3 year licence (i.e. they will have the equivalent of a compliance history equal to having completed a 2 year licence).

Rules

The rules for the award of a longer licence also include impacts for a failure to maintain compliance, which will result in the loss of the "earned recognition", and which were set out in the consultation paper:

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,	Revert to 1 year licence at the scheduled renewal	

	requiring renewal at that point	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

Fees

Longer licences will result in reduced fee income for the GLA. In reviewing this issue the GLA has concluded that the cost to the organisation of the renewal process for a licence holder moving to, or continuing on, longer licences, is not greater than the costs incurred under the current process. However, changes to licensing processes dependant on the acceptance of the discretionary inspection approach, requiring additional analysis by the licensing team, may increase the costs of those operations. This may result in a increase to fees, which would be the subject of a future Board discussion on fee levels, if so.

Therefore, the GLA concludes that the cost of two and three year licences, will not be greater than the current costs for each fee band. Consequently, it is proposed that renewal fees for any periodic licence are the same. An illustration is set out below.

A: a Band D LP renews each year for 7 successive years:

Cost: $7 \times 400 = \text{£}2800$

B: a Band D LP qualifies for a 2 year licence, after 2 years, then qualifies for a three year licence

Cost: 2×400 (single year licence) + 400 (2year licence) + 400 (3 year licence) = $\text{£}1600$

Review process

The GLA has considered undertaking OGD checks (as in application cases) at the renewal juncture, where LPs have had, or are about to have, a longer licence. The GLA considers that this will place additional burdens on partner agencies. It considers that these can be avoided due to the arrangements in place for the GLA to be notified proactively if partner agencies become aware of non-compliances within their scope of responsibilities.

However, it will issue LPs a statement of information held, as provided by the LP, to remind the LP to notify the GLA of any changes that have occurred.

The GLA will also consider opportunities for bulk data matching of the licensed population against the data held by the GLA's standard information exchange partners.

The GLA will also assess the reduced fee income, and the extent to which process revision will release resources, to assist in the review of applications that meet the discretionary criteria.

Annex C Earned recognition

Earned recognition continues to be an evolving concept. Whilst the reward of longer licences for compliance is a form of earned recognition there is no earned recognition at the application point.

Further work on this concept is designed to develop proposals in this area.

Primarily, work with the supply chain to consider existing audits, their gaps, and how they can be enhanced to incorporate knowledge of how to spot forced labour, and where to report that to is currently under way. This will consider how such audit schemes can be accredited as providing enhanced assurance, and what monitoring may be required to maintain that assurance.

The costing of this activity will need to be discussed with the industry so that it is cost neutral to the GLA but equally provides benefits to the industry.

Where a LP has undergone an accredited audit it may enable the GLA to issue a "licence to operate" so that the LP does not operate without a licence, but would not be a guarantee of the grant of a "full" licence, which would be subject to the outcome of normal checks, and other discretionary reviews.

Conclusion

The Board are asked to agree that work should continue in relation to using earned recognition for future application at the application stage (once accredited criteria for industry audits is agreed). Such proposals will be presented to a future Board meeting for approval.

Annex D Public Register and active check process

Public Register

The GLA consultation proposed that the public register should be enhanced to show the following situations:

- Licensed to licensed with additional licence conditions,
- Licensed with additional licence conditions to licensed
- Licensed (with or without ALCs) to revoked without immediate effect.
- Cases at appeal (once the GLA has submitted its response to the notice of appeal) which will be shown under their status as "under appeal"

Following legal advice the GLA has concluded that it should publish the above situations after all appeal rights have expired.

However, in the case of revocations, whether with immediate effect, or without immediate effect, where the appeal has been lost by the appellant, that information should appear on the register for a period of 3 months before being removed.

This will assist those labour users who may need to check the status of their supplier in that short term period.

Thereafter, the information will continue to appear in the published revocation list.

This change will be subject to IT re-development of the liceninsig system and will be coupled other IT enhancements. An implementation date is therefore to be determined.

It should also be noted that although the GLA will not routinely announce revocations without immediate effect it has given a clear position (see external communications policy) on those circumstances where it may become necessary to issue a press release on a particular case in the public interest. In such cases the GLA will always take legal advice. If it is determined that release of information is necessary it will also become necessary to ensure that the public register is in step with such releases. To do otherwise would confuse labour users. Therefore, the IT enhancements will also include the ability to publish a revoked without immediate effect status to the public register at the discretion of the licensing team in the above situation.

Active check process

It is proposed to enhance the active check process to reflect the any changes to the public register, where any new status or additional information generates an active check.

It would:

- Show what ALCs had been added to a licence
- Notify when an appeal had concluded, that the appeal result will appear on the public register.

The revisions to the active check process and notification letters will be linked to other enhancements to the licensing system. The implementation date is to be determined.

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