

GLA 27/7.2

Forestry Pilot

18 November 2010

BOARD PAPER REFERENCE – GLA 27/7.2 – Forestry Pilot

Issue

1. Operating a pilot scheme in Forestry to test a lighter touch to regulation.

Recommendations

2. The GLA initiates a pilot in respect of forestry.
3. The pilot runs for a 12 month period from 06 April 2011 to 05 April 2012.
4. At the conclusion of the pilot decisions will be made, based on the operation of a lighter touch whether the approach continues, is expanded, and whether it impacts future fee levels.

Background

5. The Forestry industry have argued that the activities of their members and the treatment of workers supplied are low risk, do not normally breach our standards, and that the GLA regulatory regime places a significant burden on their ability to operate economically.
6. The GLA believes that any decision to operate a different approach to licensing must be supported by a body of objective evidence. It is therefore appropriate for the GLA to consider what evidence it possesses, and how it should further evaluate current compliance levels. In keeping with the Hampton principles, the GLA intends to demonstrate a proportionate approach to regulation. Therefore, it considers that a pilot to test out a lighter touch approach would enable the GLA to demonstrate:
 - Proportionality and flexibility in its compliance approach
 - It has tested alternative methods of assessing compliance
7. The pilot will need to gather additional information to that already collected on application forms. The support of the industry is required to determine what the additional information should be. However, it may include:
 - Membership of industry groups
 - Details of audits required by its supply chain
 - Specific and relevant qualifications held by the PA, and that may be required for workers
 - A more accurate and current breakdown of the workforce numbers and nationality

8. The pilot is in line with current thinking from the Better Regulation Executive (BRE) on developing co-regulation regimes¹. Furthermore, the pilot approach proposed recognises the recent report for the BRE on "[Lightening the Load: the regulatory impact on the UK's smallest businesses](#)":

" ... However, for micro businesses, which are often owner-operated, their ability to understand and interpret regulations across the regulatory field is limited, leaving them feeling confused and 'on their own' when trying to cope with regulation. As a result they often unknowingly either under or over comply with regulations. Many businesses simply do not understand why certain regulations are introduced or why they are asked to provide information to government

9. The GLA considers that a pilot to test new approaches will:

- demonstrate that it continually reviews regulatory burdens in keeping with the Hampton principles,
- reduce burdens particularly for small/micro-businesses, and
- also be consistent with the requirements and flexibility established in the Act in [sections 1\(2\)\(c\) & \(e\), and 1\(3\)](#).

10. In order to prepare for this pilot it is proposed that a survey is conducted with those licensed labour providers who required their licence to cover forestry, as stated on their applications. The aim of the survey will be to identify whether the LP:

- Is currently operating in forestry
- Has left the forestry industry
- Is solely operating in forestry

And to provide responses to the additional information requirements as suggested in paragraph 7 above.

11. Additionally, the compliance history of the forestry companies has been reviewed to provide a sector specific assessment of levels of compliance, etc (see "[Compliance History](#)" below).

Scope of Licensing

12. A pre-requisite of the operation of the pilot will be the issue of a Forestry specific GLA brief, which clarifies the scope of licensing following on from the revised Exclusion regulations.

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BRE's current working definition covers:

- The explicit sharing of regulatory responsibility between business and government;
- The involvement of business in designing and delivering regulatory systems;
- Formal expectations and recognition around the self-management of compliance; and
- An approach to regulatory enforcement that takes proper account of internal and third party quality assurance regimes.

13. The recent discussions with the Forestry industry have focused on their concerns that the revised exclusion regulations, and therefore the GLA Brief which will explain the licence requirements, extend the scope of licensing. They do not. They provide greater clarity on situations that do require a licence, which previously may not have been clear, and which may identify existing labour providers who require a licence under the clarified scope of licensing.
14. It is essential that this brief on the scope of licensing for the forestry sector is issued so that all companies that require a licence come forward. This will enable the GLA to gain assurance that it has a comprehensive understanding, knowledge of the size, and control of the industry.
15. It is therefore expected that the pilot will commence after the GLA Brief is issued. The brief will be issued on **Wednesday 12th January 2011**, with an operational date of **Wednesday 6th April 2011**.
16. The pilot will allow for a lighter touch application inspection approach for those companies that apply as a result of the pilot, following the clarity on licensable activity.

Compliance History

17. Table 1 identifies 404 LPs that have stated they intend to supply to forestry (c+d). Analysis of the 404 licence holders compared to the total population (1135), and the sub-set that quote forestry only (81), provides the following picture:

Table 1: current licence position

Category	Full Licence	With ALCs		Total
a) All current licence holders	1096	39	3.4%	1135
b) Excl Forestry	705	26	2.3%	731
c) Forestry plus	313	10	0.9%	323
d) Forestry only	78	3	0.3%	81

18. There are 323 current licence holders (inc 10 with ALCs) who have stated on their application that they require their licence to cover forestry. However, this does not mean that they are currently operating in forestry, only that they may wish to. Therefore, there are only 81 licence holders that are operating within Forestry with any degree of certainty. The proposed survey will aim to identify whether any of the 323 licence holders are operating in forestry, and if so, whether they are solely operating in that industry.
19. In Table 1 the number of LPs with ALCs in forestry, etc, is compared against the current licensed population. Whilst it may be argued that the number of forestry LPs is not significant the number with non-compliances represents a much smaller risk to the GLA's mission than the rest of the licence population.
20. Table 2 shows the volumes of LPs that have ever held ALCs:

Table 2: Historic ALC trend

Category	Full Licence	With ALCs	Total
All licence holders	1340	754 36.0%	2094
Excl Forestry	562	320 15.3%	882
Forestry plus	709	414 19.8%	1123
Forestry only	69	20 1.0%	89

21. When the compliance history of all LPs that have held licences is viewed the level of non-compliance continues to be comparatively low when compared to those LPs operating across all other activities.

22. Table 3 provides details of those LPs that have been refused or revoked.

Table 3: Refused and revoked historic volumes

Category	Refused applications		Revoked licenses	
	No.	% all applications	No.	% all licence holders
All licence holders	102	5%	152	7%
Excl Forestry	24	1%	34	2%
Forestry plus	77	4%	117	6%
Forestry only	1	0%	1	0%

23. In total there have been 2196² completed applications since the commencement of licensing. Of the 102 refused applications only 1 is from a forestry applicant. Of the 2094 licences issued 152 licences have been revoked, only 1 of which (0%) related to forestry.

24. If the level of refusals, revocations, and ALCs for forestry cases is compared to the total number of forestry licences ever issued the level of risk solely attributable to forestry LPs is 25%³. This compares to 49%⁴ for all other cases (refusals, revocations, and ALCs excluding forestry only as a percentage of all applications received, again excluding forestry). The risk level, whilst noting the comparative sample size, is therefore considered to be low. However, it provides a sub-sector population of a sufficiently manageable size on which to test a range of approaches within the pilot.

25. The geographical distribution of the 81 current forestry licence holders is:

Table 4 Geographical distribution of LPs

Category	All	England	Scotland	N.Ireland	Wales	Overseas
All current licence holders	1135	869	146	24	34	62
Forestry plus	731	628	42	17	10	34
Excl Forestry	323	227	50	5	13	28
Forestry only	81	14	54	2	11	0

² All applications = total number of licences ever issued (2094) + total number of licences ever refused (102) = 2196

³ $(1 + 1 + 20)/89 = 25\%$

⁴ $((102-1)+(152-1)+(754-20))/(2094-89)=986/2005 = 49\%$

26. The geographical distribution of the LPs that operate solely within forestry is as anecdotally expected. Therefore, the majority of activity and cases that will be subject to the pilot rules will be predominantly in Scotland.

What is a lighter touch?

27. Paragraph 8.1 of the statutory compliance code suggests that:

“Regulators should seek to reward those regulated entities that have consistently achieved good levels of compliance through positive incentives, such as lighter inspections and reporting requirements where risk assessment justifies this. Regulators should also take account of the circumstances of small regulated entities, including any difficulties they may have in achieving compliance.”

28. A lighter touch therefore does not require a full, or physical inspection, and may utilise telephone interviews and/or the current or expanded checks, and additional information requirements to reduce the burden of inspection. This would only be applied where the GLA considers that the risk of non-compliance, and specifically activity contrary to the GLA mission statement (e.g. whether workers are exploited).

Organisation and operation of the pilot

29. A Project Board will be established, chaired by the GLA Chief Executive

30. The Director of Strategy will operate the pilot:

- To ensure that cases are decided in accordance with the pilot objectives;
- To enable analysis of regulatory outcomes;
- To report to the project board and produce conclusions and recommendations.

31. The pilot will run for an initial period of 12 months, after which the Project Board will review whether there have been sufficient cases to allow conclusions to be drawn on the effectiveness or otherwise of the lighter touch approach.

32. It is expected that the Forestry sector will work with the GLA to define a portfolio of evidence to be submitted to GLA by a firm seeking registration, the portfolio will replace the application inspection.

33. For labour providers operating exclusively within the forestry sector, the pilot will adopt streamlined processes, to test a lighter touch, which will particularly cover:

- New applications (reduced requirements for application inspection)
- Existing applications (use of random inspections as part of pilot assurance)

- Renewal (including revised approach for renewal request after expiry) close to renewal date
 - Change of PA
 - Change of legal status
 - Approach to partnerships
34. It should be noted that new applications are expected to arise particularly as a result of the clarified scope of licensing. It is likely that such forestry LPs may have traded prior to their application and it will be appropriate to treat such cases under an effective amnesty for the period of the pilot. However, this amnesty will not apply if there are indications of exploitation and abuse for a particular applicant.
35. The GLA reserves the right to revert back to the 'full' licence scheme, including the use of criminal sanctions, at any point in the pilot or at the end of the pilot.
36. There will also be random inspections of firms involved in the pilot by GLA officers during the pilot.
37. Analysis of the operation of the streamlined procedures, as identified above will be undertaken throughout the period of the pilot, with interim reports for the pilot project board.
38. At the conclusion of the pilot the GLA will decide whether:
- The pilot procedures, as adapted by experience should become standard practice for the forestry industry
 - Whether the approach should be rolled out generally, or to any other specific sub-sector of business type
 - Whether a lighter touch requires a different fees approach

It is recommended that the board approve this pilot.