

# 8.1 Key Issues from Consultation

January 2006

**BOARD PAPER REFERENCE – GLA8/8.1 – KEY ISSUES FROM CONSULTATION**

Issue

1. To advise the Board of the key issues from the consultation exercise and to agree the GLA position in response.

Recommendations

2. To note the key issues raised in response to the consultation.
3. To approve the GLA's recommended position.

Background

4. The GLA consultation on the proposed arrangements and conditions for licensing scheme began on 17 October and closed on 12 December 2005.
5. Over 60 written responses were received and approximately 200 people attended 12 consultation events held across the UK.
6. There was general acceptance of the proposed Licensing Standards and scope. However, a number of key issues were raised. These are outlined below with the GLA's recommended position in response.
7. A detailed report summarising the responses received will be published in March. Individual responses are available on request, in accordance with the Cabinet Office Code of Practice on Consultation and Freedom of Information legislation.

Key Issues

**Names on Licence**

8. The consultation document proposed that the Principal Authority, Directors, Partners and those authorised to approve terms and conditions with labour users are named on the licence.
9. Concerns were expressed, particularly by the ALP and REC, that this approach was impractical and would impose a significant administrative burden, especially on the larger labour providers who have a large number of individuals to be named on the licence.

*Discussion*

10. The Act states "a licence authorises activities by the holder of the licence [ie. the corporate entity], and by persons employed or engaged by the holder of the licence who are named or otherwise specified in the licence". On legal advice, this has been interpreted as a requirement to name or otherwise specify a number of key individuals in any labour providing business.
11. "Naming" or "otherwise specifying" allows two options – to name or to allow for post or job titles to be used to identify people authorised to act under a licence. The GLA has been advised that there is a wide range of different terms to

describe posts in different organisations, and that any terms that the Authority might consider imposing for this purpose would be open to misinterpretation. The GLA therefore proposes to “name” rather than to “otherwise specify”.

12. A further issue regarding who should be named on the licence has emerged concerning Agents. The Act also requires that Agents used by the labour provider be identified on the licence.
13. The GLA considers that for the labour providers with a turnover under £5million in the licensable sectors, there would be very few names (2 – 3 maximum) to be included on the licence. These labour providers represent an estimated 95 per cent of those who will apply for licence. The GLA acknowledges for the larger labour providers there will be an ongoing administrative cost, particularly through notifying the GLA of changes in details. However, the process for notifying for the GLA of changes in detail will be designed so it imposes only the least possible burden.

#### *Recommendation*

14. The Authority recommends that the following individuals be named on a licence:
  - (a) The Principal Authority. The person with overall responsibility for the day-to-day running of the business.
  - (b) All directors and partners.
  - (c) Any individual who is authorised by the Principal Authority to negotiate with and supply workers to a labour user.
  - (d) All agents. An agent is someone who is acting on behalf and at the command of a labour provider for purposes of recruiting workers. Recruiting could include placing adverts or interviewing workers on behalf of labour workers supplying workers in the UK. The scheme guidance will advise labour providers to check with the GLA before naming an agent to ensure that they are not a gangmaster in their own right.

#### **Licence Fee**

15. Consultees considered the proposed licence fees (£660 - £32,500 per annum) much too high. There was general concern that fees at this level would drive reputable businesses out of the sector and that they will be replaced by less reputable operators, many of whom will seek to evade the licensing arrangements completely. There was also concern that the proposed fee structure would remove the incentive for labour providers to seek a TLWG audit to help prepare their businesses for licensing. Most respondees favour a banded approach to fees, linked to actual (as opposed to projected) turnover. However, many pointed out that the proposed link to turnover could be difficult to verify in practice.

#### *Recommendation*

16. The GLA proposals for the licence fee and structure are set out in the Fees and Charges Paper (GLA8/8.2).

## **Licensing Standards**

17. The consultation was launched on the basis of Version 8.3 of the GLA Licensing Standards.
18. There was broad acceptance that the licensing standards were necessary, and there was general support for a licence regime based on the TLWG code and with the principle of licensing decisions being made on scored performance against published standards and other relevant criteria.
19. A number of issues were raised that included:
  - The scoring system was considered to be insufficiently proportionate.
  - The approach for using Additional Licensing Conditions was considered to be complex and too onerous for addressing minor non-compliances.
  - The REC urged that the conditions be more closely aligned with the Employment Agencies Act Conduct Regulations. In particular Regulation 10, which governs transfer fees between labour providers and labour users, of the Conduct regulations should be included.
  - An observation that the Licensing Standards were far less appropriate to businesses involved in shellfish gathering, than to those in agriculture, horticulture and the associated processing.

### *Recommendation*

20. Immediately prior to consultation, the GLA Board had expressed major concerns regarding the lack of proportionality indicated by Version 8.3 of the Licensing Standards. As a result, the GLA produced Version 8.6 of the Standards that was circulated to Board members and discussed with other stakeholders during the wide range of consultation events. Version 8.6 removed many of the concerns regarding proportionality.
21. The scoring system has been revised further in the light of consultation responses. Paper GLA8/9.3 presents the amended Licensing Standards. With the revised scoring system, the GLA proposes four categories: Critical (30 points), Major (8 points), Reportable (4 points), and Correctable (2 points). A score exceeding 30 points would result in a failed inspection, leading to refusal of licence for a new applicant or revocation for a current licence holder.
22. Further proportionality is proposed for Year-1. During the first year, the GLA will use only Critical and Major non-compliances to make licensing decisions. Reportable and Correctable non-compliances will be used to contribute to the risk rating for Compliance activities.
23. The GLA acknowledges that using Additional Licensing Conditions (ALCs) attached to a licence to address minor non-compliances could be disproportionate. Therefore, the GLA proposes to issue ALCs for Licensing Standards in the Major category only. Licence holders will be notified of Reportable and Correctable non-compliances and given a date to complete remedial action, but they will not be a formal condition of the licence in the first

year. Reportable and Correctable non-compliances will instead be used to inform the licence holder's Risk Rating, which will determine follow-up Compliance Inspection activity. This approach will be monitored and reviewed during the first year of live operations.

24. Versions 8.3 and 8.6 of the Standards contained only the provisions from the Conduct Regulations that were considered to be appropriate to a labour provider operating in the sectors for which the GLA has authority. However, the Authority acknowledges the need for a consistent approach for labour providers who supply into both the licensable sector and other sectors. Therefore, the GLA is proposing to include all relevant Conduct Regulations in the Licensing Standards (excluding those provisions exclusively aimed at the entertainment industry). The Conduct Regulations now to be included are:

- Restrictions on providing work-seekers in industrial disputes (Reg. 7 of the Conduct Regulations).
- Restriction on charges to hirers (Reg. 10 of the Conduct Regulations).
- Entering a contract on behalf of a client (Reg. 11 of the Conduct Regulations).
- Requirement to obtain agreement to terms with hirers (Reg. 17 of the Conduct Regulations).
- Civil liability (Reg. 30 of the Conduct Regulations).

25. The GLA acknowledges that the Licensing Standards as proposed do not fit comfortably with at least some areas of the shellfish-gathering industry. A workshop specifically for the Shellfish industry is arranged for early in the New Year. The approach for labour providers operating in this sector will be revised accordingly.

### **Public Register**

26. One body (the ALP) was concerned that the GLA planned to open the Public Register from when the first licence was issued (April 2006), and to add to the Register as further licences were issued. They observed that it would not become an offence to provide labour without a licence until September 2006 (L-Day), and they saw those businesses that happened to get themselves licensed ahead of this date, enjoying an unfair advantage. They also pointed out that some licences would process more quickly than others for a variety of reasons beyond the control of the GLA or the applicant, and felt this should not be allowed to give an advantage. It was suggested that the Public Register should not be made available until after L-Day, or that it should be revealed in pre-publicised stages, perhaps tied to different licence fees to incentivise early take-up.

### *Discussion*

27. The GLA is of the view that a common approach has been taken in communicating the setting up of the Authority and its approach to licensing, and that every business or group of businesses has been able to decide for itself

whether to register for a TLWG audit and when to submit its application for a GLA licence. Furthermore, advice received from the Office of Fair Trading suggests that the posting of licences on the Public Register as they are issued would not have competition implications – this approach has been taken previously by at least one other OGD.

28. It has been suggested that a business might be disadvantaged by its application being delayed in its processing through no fault of the applicant. To mitigate this, it has been suggested that applications for licences might be posted on the Public Register, in addition to the issue of licences.

*Recommendation*

29. The GLA will post the details of successful applicants on the Public Register as licences are issued. In addition, the Public Register will indicate applications received and in processing by the GLA

**Printed Licences**

30. There was wide spread opinion that the GLA should issue a paper licence. There was a general feeling that labour providers wanted something that could be displayed.

*Recommendation*

31. The GLA intends to notify the outcome of the licensing application by an electronic message. However, notification of a successful application will be in a form that can be printed out by the applicant if required.

**Risk Based Approach**

32. There was general agreement with the principle to take a risk-based approach in deciding whether an applicant should be subject to an Application Inspection, and in targeting and scheduling Compliance and Enforcement activities.
33. It had been stressed previously by the GLA Board that a risk-based approach for decisions on Application Inspections should not be followed until there is sufficient information on the industry

*Recommendation*

34. Application Inspections to be conducted for all non-TLWG audited businesses (and a small random sample of TLWG-audited businesses) until the Board agrees that a sufficiently robust risk profile exists to allow a risk-based approach.

**Second Consultation**

35. A single respondent (the ALP) has suggested that the contentious nature and lack of time for proper consultation on names on licences, the fee structure and the Licensing Standards, argue for a reduced second consultation.

*Recommendation*

36. The GLA view is that there have been no substantive changes in the underlying principles presented in the consultation. Changes to approach have been made following comments raised in the consultation exercise. Even allowing for a short period, a second consultation would also delay the planned date for inviting applications for licences by weeks, if not months. The Authority does not support the suggestion for further consultation.

Next Steps

37. Subject to Board approval, the Chair will write direct to other Government Department Ministers for clearance on the arrangements for the licensing scheme. The Gangmasters (Licensing Conditions) Rules will then laid before Parliament in time for them to be in force for 3 April.