

**GLA12/8.7**

# Overseas Labour Providers

17 October 2006

## **BOARD PAPER REFERENCE – GLA12/8.7 – OVERSEAS LABOUR PROVIDERS**

### Issue

1. This paper sets out issues that the GLA will need to consider when taking forward the licensing of overseas labour providers.

### Recommendations

2. Board to note these issues.

### Background

3. Recently, a number of queries have been raised by overseas labour providers about the requirements for licensing. Coupled with this, the GLA has received information from a number of labour users that they are being approached by agencies in the new EU states. A number of overseas LPs have already applied and been granted a licence. However, these businesses had undergone a TLWG audit.
4. Initial contact has also been made with some EU member states regarding their licensing scheme. This has provided little information to date and it is likely that we will require further contact with the Foreign and Commonwealth Office before this can be progressed further.

### Summary of Issues

5. Issues are categorised for ease of reference.

## **Policy**

### Issue 1

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

6. A number of agencies based in the EU claim to be acting as an agent i.e. they introduce workers to a UK based labour provider or labour user. Defra has advised that if they are acting as an agent then they will not require a licence.
7. The GLA needs to define what an agent is and publicise this so that we can advise overseas agencies whether they should apply for a licence. Verification of this will be difficult and so it may be that we need some form of self-declaration.

### Issue 2

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

8. Legal advice has been sought from Defra on this point. One agency in Slovakia has claimed that this would mean that we would be breaching Freedom to Provide Services i.e. the movement of manpower and would seek to challenge

this. Defra legal have advised that we can require a licence as the EU state issued licence would have to be comparable to ours before this would cause a problem.

9. We currently have a line available for use on this which states that a licence is required. Once the position has been finalised with DEFRA we will issue a full response to all enquirers setting out the exact position based on case law etc.
10. The GLA is currently looking at the licensing regimes in place in other EU member states to ascertain whether they are comparable to the GLA scheme. This will enable us to be prepared should we be challenged and provide useful contacts and information for future enforcement action.

#### 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?**

11. The cut-off date for applications will be difficult to impose on EU. We cannot put pressure on Labour users by threatening prosecution as the "Reasonable Steps" position has not yet been agreed and the offence does not commence until 1 December 2006. The GLA is considering how to treat Lp's in this position and will look positively on those who come forward but we are not able to licence at this point.

#### Issue 4

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

12. The licensing standards are based on current UK law which may not be mirrored in other countries. The GLA is considering how to verify recruitment practices in the country of origin of the worker which may breach the standards e.g. charging for work finding services. It may be that this is where a licence issued by the home state would help as it should ensure compatibility with their own law. If no licensing scheme is in place this will need to be factored into the risk profile.

#### Issue 5

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

13. It is clear that some labour users are using staff supplied directly from an overseas labour provider. Generally, this seems to be the supply of workers to pick crops for farmers etc where they take on responsibility for paying the worker etc. We need to raise awareness that these LPs will require a licence and explore how we tackle those LPs who do not come forward for licensing. The GLA is considering an approach of educating labour users that any LP will need a licence irrespective of where they are based.

Issue 6

**Prosecution Policy for overseas labour providers.**

14. The GLA is reviewing the current prosecution policy.

**Operations**

Issue 1

**The application process.**

15. The GLA is reviewing the application form to ensure it fits the needs of overseas labour providers.

Issue 2

**The application inspection process.**

16. The GLA is considering how to conduct application inspections on overseas LPs. This has inherent difficulties relating to language, location and the requirements in law of the country of origin. Obviously, the usual interviews with workers will be straightforward as they will be UK based. However, most overseas LPs will not be "employing" the workers and may be supplying down the chain to a UK based LP so as outlined above we will need to look at the application of the licensing standards. Linked to this will be compliance inspections which raise the same difficulties.

Issue 3

**Developing relationships with overseas Governments.**

17. The GLA will not undertake any activity in other countries without getting support from the home government. In particular, if we did decide to undertake any enforcement activity we would need to work closely with enforcement agencies in the home country to ensure success.

18. The GLA will need to put in place an MOU or other similar device to ensure that we have the requisite levels of co-operation required. This should be possible with EU states but could prove difficult with other regimes. Evidence on the location of LPs at present seems to suggest that most LP's overseas are based in an EU state.

**Other Issues**

Issue 1

**Whether the GLA will conduct business in other languages?**

19. The GLA is exploring the possibility of providing information for the licensing scheme in other languages so that LPs have a good understanding of the

requirements. The GLA is also considering whether to accept applications and issue licence certificates in different languages.

Issue 2

**The payment of fees.**

20. There will be two issues to consider here. Whether the GLA will accept payment in any other currency and whether the licence fee should be the same for non-UK based labour providers.
21. Concerns have already been raised that overseas labour providers will find the fee too high and so may not come forward. It would be difficult to justify a different level of fee without being criticised by other businesses. However, the GLA will investigate whether any OGD has a differential charging regime.