

This Brief provides awareness on the new forced labour offences, how they relate to the GLA's licensing standards, and the action the GLA may take where offences are indicated.

Introduction

The role of the GLA is to primarily detect and prevent exploitation of workers by labour providers. The licensing regime and the requirement for labour providers to be compliant with licensing standards provide a method to assess compliance and reduce the risk of exploitation of workers. The Gangmasters (Licensing) Act 2004 also introduced the offence of operating without a licence, and the offence of using workers supplied by an unlicensed labour provider.

If an unlicensed gangmaster is found to be exploiting workers, the GLA could only prosecute the labour provider for not having a licence.

If a licensed labour provider was found to be exploiting workers, the GLA could just revoke the licence.

In the above situations the GLA's regulatory regime did not enable the greater harm to workers to be brought to the Courts. Exploiters could therefore avoid being severely penalised for their conduct, until now. New offences of forced labour have now been introduced across the UK. The GLA is working with the Association of Chief Police Officers (ACPO), and the Crown Prosecution Service (CPS), and UK Borders Agency on how such offences may be dealt with.

The Offences

Section 71 of the [Coroners and Justice Act 2009](#) introduced a new offence of holding someone in slavery or servitude, or requiring them to perform forced or compulsory labour. It came into force in April 2010 in England and Wales and Northern Ireland. In August 2010 section 47 of the [Criminal Justice and Licensing \(Scotland\) Act 2010](#) introduced the same offence in Scotland.

Until the introduction of the new section 71 and 47 offences the only direct offence in relation to forced labour was [section 4](#) "trafficking for people for exploitation" of the Asylum and Immigration (Treatment of Claimants) Act 2006. This offence required a person to have been trafficked into the UK and exploited to meet the elements of the offence. The new offences do not require someone to have been trafficked into the UK to prove the forced labour offence.

The GLA approach

GLA Inspectors have received awareness training on the new forced labour offences, the elements of the offence, and the parallels to the GLA's licensing standards.

Although the GLA is not empowered to prosecute the new offence independently it is working with partner agencies on how such offences may be dealt with. Once complete similar approaches will be negotiated to cover Scotland.

Currently, where the GLA identifies offences that breach its standards but may also be prosecutable by other enforcement agencies the information is disclosed to them, so that appropriate action can be taken. The same applies to criminal offences dealt with by the police and will apply in respect of the new offences.

GLA inspections will identify whether licensed labour providers and licence applicants are, and remain, compliant with the licensing standards. The ALP has also produced [guidance](#) for its members on the new forced labour offences. Where non-compliance is identified the GLA will make appropriate licence decisions (e.g. refuse, revoke, or issue ALCs). Where the nature of the non-compliance also cover the elements of the new offence, the GLA will liaise with the appropriate police force and/or UKBA to ensure the harm created by forced labour is correctly investigated and prosecuted where appropriate. Such prosecutions will be brought by CPS in England and Wales.

GLA investigations into unlicensed labour providers will also identify whether the labour provider breaches the licensing standards and appears to be committing forced labour offences. This approach may also examine businesses that exclusively provide accommodation and/or transport to the labour providers' workers, to whom they become bonded through debt. Such conduct will represent aggravating factors that will be taken into account by the courts on prosecutions, and may result in more severe penalties for operating without a licence. However, where investigations potentially identify the new forced labour offences the GLA will liaise with the appropriate police force and/or UKBA, as above.

GLA investigations against labour users who use unlicensed labour providers (which also covers labour providers that sub-contract to another labour provider), may also be referred for further action. This will be appropriate where the labour user has colluded with the labour provider to create an environment of forced labour, or knew of the potential forced labour, and ignored complaints from workers. It is important that labour users exercise due diligence where allegations of forced labour emerge. They should consider alerting the GLA and/or the police/UKBA to such situations.

As experience of what constitutes the criminal offence of forced labour develops the possibility of joint prosecutions under section 71 or 47 and section 12 and/or 13 of the Gangmasters (licensing) Act 2004 will arise.

Issues

Examples of forced labour indicators which may require further investigation with enforcement partners where elements of coercion and/or deception are suspected include:

- Workers had to pay fees to obtain work and are required to pay for a range of services they do not require, or have access to, including deductions that are unspecified.

- The worker is bonded through debt to the employer where repayment of fees leaves little wage to live on, and where the amount of available work may also be reduced to create the situation.
- Threats and violence are used to control the work force; they may be intimidated physically or mentally by their employer or other employees as directed by the employer.
- Workers are forced to use accommodation that they are directed to, paying excessive rent for unhygienic and overcrowded accommodation, potentially being required to continue to pay for it if they leave, under threat that they will otherwise lose their employment.

Trafficking, forced labour, and exploitation

In March 2007 the Home Office produced the UK Human Trafficking Action Plan. It recognised that: "One of the difficulties we will face in investigating trafficking for forced labour is distinguishing between poor working conditions and situations involving forced labour. The element of coercion is an important indicator of the latter."

Trafficking is defined as:

"... the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.", (United Nations, Palermo protocol, 2000).

Where trafficking is proven it will include forced labour (workers forced to work against their will, in situations of debt bondage, etc) and poor working conditions, which themselves create exploitation.

Forced labour may occur without the additional elements to constitute trafficking offences, but will inevitably include other poor working conditions.

The GLA's licensing standards therefore cover areas that meet the indicators of the forced labour, and also aspects that will be considered to be exploitative even if they do not represent forced labour. The UK Government is committed to making the UK a "hostile environment" to those who commit forced labour in any form. The GLA's role supports this as it is uniquely placed to identify potential offences, with an inspection and investigation capability that will use its licensing standards to differentiate between exploitation and more serious instances of forced labour, or trafficking.

Where you identify indications that workers may be in forced labour situations you should contact the GLA and/or the police.

Guidance on the new offences

The Ministry of Justice has issued guidance in relation to the offences in England, Wales, and Northern Ireland: Ministry of Justice Circular [2010/07](#); and an explanatory leaflet that may be [downloaded](#). As the offence has only recently been introduced in Scotland no separate guidance has so far been produced.

Guidance from the [Crown Prosecution Service](#) (CPS) identifies key elements of proof of the new offence as being the existence of coercion and/or deception between the offender and the victim. The new offence may be more likely to be used in preference to the Asylum and Immigration (Treatment of Claimants) Act 2006 offence where “the victims are EU citizens or in circumstances where the victim was not trafficked.” (CPS guidance). A full list of links is available on the version of this GLA Brief that appears on the GLA website.

Comparison between the indicators of the new offence and the licensing standards

The guidance issued by the Ministry of Justice identifies parallels to the GLA’s licensing standards:

Forced labour indicators (extracts from paragraph 10-11 of Circular 2010/07)	Relevant GLA standard
<i>Indicators that may identify coercion as part of forced labour:</i>	
Violence or threats of violence by the employer or the employer’s representative;	3.1 (critical)
Threats against the worker’s family;	3.1 (critical)
Threats to expose the worker to the authorities (e.g. because of the worker’s immigration status or offences they may have committed in the past);	3.1 (critical)
The person’s documents, such as a passport or other identification, being withheld by the employer;	3.2 (critical)
Restriction of movement;	3.2 (critical)
Debt bondage;	3.2 (critical)
Withholding of wages.	3.3 (critical)
<i>Additional Indicators that may identify forced labour:</i>	
The worker being given false information about the law and their employment rights;	7.3 (major)
Money having been exchanged with other employers/traffickers etc for the person’s services in an arrangement which has not been agreed with the person concerned or which is not reflected in his remuneration.	3.2 (critical) – not explicitly stated; indirect link to second major bullet point under this standard
Excessive working hours being imposed by the employer;	5.2 (major)
Hazardous working conditions being imposed by the employer;	6.3 (major)
Not being provided with safety equipment and clothing, and/or being charged for the provision of such equipment that is essential to perform the work	6.3 (major)
Unwarranted and perhaps unexplained deductions from wages;	2.2 (critical)/2.4 (major)/3.3 (critical)
Poor accommodation provided by the employer (e.g. accommodation that is overcrowded, not licensed as a “House of Multiple Occupation” by Local Authorities, or does not have any necessary gas and electricity safety certificates);	4.1 (critical)/4.2 (major)
Intentionally poor or misleading information having been given about the nature of the employment (e.g. about the location or nature of the work);	7.3 (major)
The person being isolated from contact with others;	3.1 (critical) not explicitly stated; indirect link to this standard

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