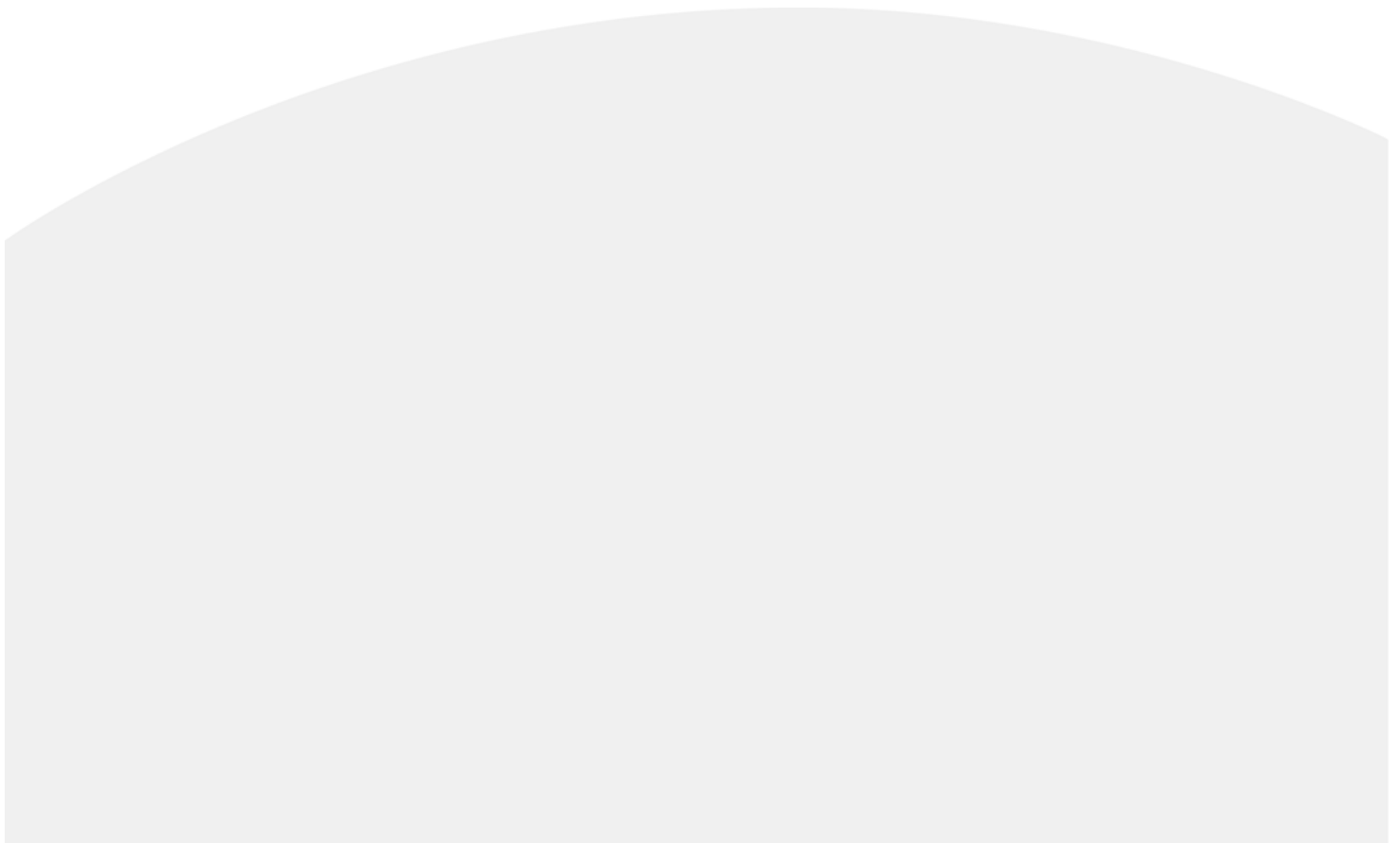




# **GLA Application and Inspections Consultation**

**17 January 2013**



## Foreword

The Government is committed to proportionate regulation that does not hinder economic growth. As a regulator with considerable impact in discrete industry sectors (agriculture, shellfish and their associated processing and packaging activities) we recognise that the GLA's regulatory approach could hinder the economic success of small and medium size enterprises. For example, a licence is required before a labour provider can legally trade in the sectors regulated by the GLA. If that licensing process is overly burdensome and slow it may dissuade compliant businesses from seeking to supply labour in this sector. We must avoid that consequence.

The GLA is committed to focusing on the identification, prevention, prosecution, and regulation of labour providers whose actions exploit their workers, and may also circumvent UK law e.g. tax regulations. It is therefore essential that the GLA utilises its resources to best effect by prioritising those cases which indicate the greatest potential harm to workers, and breaches of UK legislation.

It is essential that the GLA concentrates on the regulation of those labour providers who are seriously non-compliant applying a risk based assessment to determine where and how to place its resources.

The GLA will continue to use the GLA licensing standards as the cornerstone of its assessment of a labour provider's compliance, utilising information from other Government Departments, the police, other regulators, and their international equivalents to supplement information from prospective licence holders. Together this information assists the GLA to identify risk. We believe this is the right approach, on which we intend to build further.

We therefore welcomed the Government's Red Tape Challenge, and the opportunity it provided to take a fresh look at some of our procedures. As part of this the GLA is reviewing how we might move away from compulsory application inspections to using a risk based approach. The objective is to protect the gateway to holding a licence while reducing financial cost to labour providers and freeing up GLA resources to concentrate on enforcement work.

In this non-statutory consultation we suggest ways in which current processes may change, and ask a number of questions. We encourage you to provide your views on these questions to assist the GLA in redefining some of its processes, assisting it to focus on the seriously non-compliant gangmasters who create the greatest harm, reduce burdens on the compliant, and continue to regulate in an effective manner that maintains compliance.



**Margaret McKinlay, GLA Chair**



**Paul Broadbent, CEO**

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## Introduction

- 1.1 This consultation reviews the Gangmasters Licensing Authority's (GLA) application inspection process, and related procedures. We are interested to hear your views on how the GLA can improve the application process in a manner that reduces the costs and burdens for applicants, but ensures that those individuals and organisations that represent the greatest risk of non-compliance with GLA's licensing standards, and therefore potential risk to workers, continue to be tested in a robust, but proportionate manner.
- 1.2 In conducting this review, the GLA's objective is to ensure the proposals for change continue to safeguard the welfare and interests of workers, levels the playing field for legitimate licence holders as well as reducing the burden on business.
- 1.3 The consultation sets out proposals for change in the following areas:
  - The application inspection process (section 2)
  - Renewal process (section 3)
  - Earned recognition (section 4)
  - Changes to the public register and active check process (section 5)
- 1.4 Section 6 summarises the consultation questions, and section 7 sets out how to respond to this consultation.
- 1.5 A number of questions are included throughout the document. You may answer some or all of the questions; all comments and proposals submitted are welcome.
- 1.6 Please note: this consultation does **not** seek views on GLA licence fee levels, but does seek views on potential changes to procedures which may impact whether fees are payable in specific circumstances (i.e. renewals).
- 1.7 The closing date for responses is **15 March 2013**

### Background

- 1.8 This consultation meets the GLA's commitment to review its procedures in light of the conclusions of the Government's "Red Tape Challenge" assessment of the GLA approach. Defra published its response to the review on 24 May 2012. A copy of that announcement can be found in Appendix 1.
- 1.9 The GLA came into existence in 2005. In the same year the then Chancellor of the Exchequer accepted the report on reducing burdens on business by Philip Hampton. The report made a number of recommendations, referred to as the "Hampton principles", and led to legislative changes, and further guidance to regulators.
- 1.10 A significant recommendation embodied in the report was the requirement for regulators to apply a risk assessment methodology in its decisions on whether to undertake an inspection of a business. The GLA took cognisance of that recommendation in the development of its inspection approach, and undertook two reviews to determine whether it could introduce a risk profile that would be used to

benchmark whether an applicant for a licence needed to be inspected to provide reassurance that they were compliant with the GLA's licensing standards. At the time of those reviews it was concluded that the GLA had not reached a maturity in terms of its data to enable such an approach with any significant degree of reliability. Therefore the approach currently in operation was implemented.

- 1.11 A summary of the Hampton principles relevant to this consultation, changes in legislation arising from the report, and details of the GLA's previous reviews, and where to find further information, can be found in Appendix 2.
- 1.12 The written ministerial statement on the "Red Tape Challenge" (RTC) commits the GLA to review its application and related licensing and inspection procedures. In support of this review the GLA has therefore undertaken a review of its data, to assist consultation respondents in understanding the GLA's current assessment. The data analysis can be found in Appendix 3.

1.13 In undertaking the data review the GLA considered the following issues:

- The extent to which the checks across Government data indicated the risk of non-compliance
- Whether the grounds for refusal decision mapped to the any adverse Government data received
- Whether those cases that did not identify adverse information from Government data were subsequently identified as non-compliant, and the grounds for such decisions
- The incidence of particular failures of the standards

and provided an assessment of the confirmed risk.

1.14 This data review has given the GLA the confidence that it is now appropriate to review its approach and undertake this consultation and seek the views of stakeholders on a range of proposals that:

- meet regulatory principles,
- reduce burdens to business,
- enable the GLA to focus more forensically on the most serious allegations of worker exploitation,

but:

- continue to provide assurance that the risk of exploitation is effectively addressed, and
- workers continue to be provided with protection through the GLA's regulatory practice.

- 1.15 Before moving to more detailed aspects of possible changes to the GLA licence application process we would welcome your views on the proposal to move away from an inspection for every application received, answering the three questions below.

**Questions for consultation:**

- 1 Do you agree that the GLA should adopt a risk based approach to determine whether an inspection is required on receipt of an application?**
- 2 Are there any specific situations in which you consider an inspection should always be required?**
- 3 Do you think there are any specific situations in which an inspection of an applicant should never be required ?**

**Next Steps**

- 1.16 Subject to the responses received, we intend to implement any changes to the licensing procedures starting in June 2013.

## 2. The Application and Inspection process

- 2.1 This section outlines the areas of the application process we are proposing to revise. We would welcome views on these proposed changes.
- 2.2 In Appendix 3 we set out our assessment of the sources of information on areas of non-compliance. It indicates that not all evidence of non-compliance or indication of risk comes from the same source. Government checks undertaken at the application stage continue to be a strong indicator of risk but may not necessarily represent the complete picture as regards non-compliance that is determined in the licensing decision.
- 2.3 However, these information sources will assist in determining the cases of greatest risk that will continue to require an inspection. It will also enable the GLA to fast track those applications that are considered to be a low risk of non-compliance. This process was tested in the forestry pilot, and we now consider that we can extend that approach across the application process, as recommended in the MacDonald report<sup>1</sup>.
- 2.4 It is therefore proposed that the application process be revised, and only require an inspection on application, in the following circumstances:
- Where the Government check element of the process indicates a risk of non-compliance, based on previous contact with other Government Departments
  - Where information is received that suggests there are factual inaccuracies on the application form, or there is lack of evidence of procedures to ensure compliance or lack of evidence that the prospective licensee would conform to licence condition 1.1 ("Fit and Proper")
  - Where an application follows a previous revocation of a licence
  - In 10% of all other cases where there is no apparent indication of non-compliance, and which will act as a control and assurance of the effectiveness of the revised process.
- 2.5 There may be other situations in which inspections ought to be considered, and we would welcome views on what those circumstances might be. If you have any specific views on these issues we would welcome them in answer to consultation questions 2 and 3 (see section 1).
- 2.6 To ensure this process is robust we may consider extending the list of those organisations from which we seek information at the application stage in every case. Currently they are: Her Majesty's Revenue and Customs (HMRC), United Kingdom Border Agency, HMRC (National Minimum Wage Operations), Business Innovation and Skills (Employment Agency Standards), Health and Safety Executive and Department for Work and Pensions. We may also need to expand the scope of our current enquiries with these Government Departments. Other organisations may be

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<sup>1</sup> <http://www.defra.gov.uk/publications/files/pb13527-farm-reg-task-report.pdf>

additionally contacted currently dependant on the information provided on the application form, which includes the police and overseas labour inspectorates, where appropriate. If you have views on how this process ought to be enhanced please provide them.

- 2.7 Taking this approach will reduce the number of occasions that the GLA will need to undertake application inspections. Like its approach to licence holders, where compliance inspections may be required, the decision to initiate an inspection will generally be determined by risk indicators.
- 2.8 The data analysis undertaken (Appendix 3) shows that 27% of current applicants either have their licence refused or have additional licence conditions imposed. If inspections were reduced to 27% plus 10% random checking based on a projection of 180 new applications per year, this would result in a reduction of 113 inspections to a level of 67 per year. This would be a significant reduction in the burden on compliant businesses. This will enable the GLA to redeploy its resources on cases of highest risk, where there may be an increased likelihood of forced labour occurring. If GLA were better able to identify non-complaint businesses through other government Department (OGD) checks, the number of application inspections could be further reduced, including a review of the number subject to random checking.
- 2.9 Furthermore, as application inspections would not occur in all cases, the GLA would remove the requirement for an application inspection fee on application. Applicants would still have to pay a GLA licence application fee.

#### **Questions for consultation**

**4. Do you consider the list current Government organisations consulted by GLA is adequate, or do you think that the GLA should seek information from other organisations? If so please indicate which organisation(s) you consider appropriate?**

**5. What information do you believe the GLA should be seeking from Other Government Departments or other organisations**



### **3 “Earned Recognition” – the portfolio of evidence**

- 3.1 This section examines proposals to address “earned recognition” in the application process.
- 3.2 The concept of regulators relying on “earned recognition” was included in the recommendations from the “MacDonald” farming task force review, which has been further supported by the Better Regulation Executive, and their guidance to regulators. “Earned recognition” may however be more easily demonstrated by those labour providers that already hold a licence (see section 4) than new applicants. However, “earned recognition” at the application stage for example through a review of other documentation could provide assurance that inspection is not required. This could include the demonstration of compliance from supply chain audits.
- 3.3 The GLA considers that if the application inspection process is changed there may need to be additional information sought in the application process. An indication of the areas on which further information may be required can be found in the analysis in Appendix 3 (paragraph A3.9). We also recognise that it is important for the GLA to set out its requirements to ensure a consistent and comparable assessment of one labour provider’s compliance against another, to assist in objective decision making, which is equally defensible on appeal.
- 3.5 We have also considered whether an expanded self-declaration process might assist in the process. This process might include applicants presenting references from recognised person or authority that the applicant was a “fit and proper person” to hold GLA licence. If such references were proven to be inaccurate that would be taken into consideration in any licence review. Alternatively, instead of introducing a new procedure a simpler approach might be to review the current declaration to ensure it satisfactorily covers a declaration of knowledge and compliance with the standards by the principal authority.
- 3.6 The GLA would welcome the views of stakeholders on the type of documentation that it should seek in the application process, and any controls or checks respondents consider appropriate to ensure that the process adopted is robust and provides reliable, and provides an objective assessments of compliance.
- 3.7 In analysing the information provided in the revised process the GLA may consider the evidence provided sufficient to enable it to reach a licensing decision. However, it may also identify that an inspection is necessary to resolve any residual concerns.

#### **Questions for consultation**

**6. What documents do you consider the GLA should seek in place of an application inspection, which may also assist in determining whether an inspection should occur (which may include industry audits)?**

**7. What controls do you consider are necessary to ensure that an objective and reliable assessment of compliance can be made, including an assessment of the competency of the Principal Authority?**

## **4. The GLA licence renewal process**

- 4.1 This section considers further possible changes regarding the licence renewal process.
- 4.2 Analysis of the current licence holders, across all fee bands, and therefore across all sizes of labour providers, indicates that, on average, 66% of labour providers have held licences continuously for two years or more. For Band B licence holders the figure is 96% (see Appendix 4).
- 4.3 Under the current process there is no recognition of a licence holder's "good conduct" compliance with the licensing standards. Each year the licence holder has to pay the renewal fee required for the fee band relevant to its turnover in the GLA regulated sector. The GLA initiates a renewal cycle process 6 weeks before a licence expiry, consisting of reminder letters, and contact by telephone, where appropriate.
- 4.4 The GLA considers that this process can be streamlined, with cost benefits to both licence holders and the GLA.
- 4.5 We consider that a process wherein licence holders either benefit by a longer licence in recognition of compliance, operating similarly to the principle of the development of a "no claims bonus" in the insurance industry, or where a licence is issued and held until such time as it is revoked, avoiding the necessity of regular renewals, might be welcome by the industry.
- 4.6 The two models explored here are:
- The extended licence (scenario 1)
  - Removal of renewals (scenario 2)
- 4.7 In providing views on these proposals it should be understood that, routinely, GLA does not undertake a check against Government data currently, or carry out an inspection, at renewal. The main requirements for the licensee at renewal are to notify the GLA of any significant changes, (which should have been notified during the year, when they occurred,) and to confirm the licence holder's annual turnover, so that the correct renewal fee is paid.
- 4.8 Inspections will only occur if information has been received that indicates non-compliance. This can mean that a renewal cycle may commence, and result in a new licence whilst action separately commences to determine compliance through inspection which could ultimately result in revocation. It is not appropriate in such circumstances to delay renewal in case the inspection confirms non-compliance sufficient to warrant revocation.
- 4.9 Scenario 1 would require a reassessment of whether current renewal fees remain appropriate, or require review dependant on the revised process that would need to be introduced.

### **Scenario 1**

- 4.10 In this model, after completion of one complete year without identified non-compliance, a licence holder could be allowed to renew and receive a two year licence. Further continued compliance might result in a longer licence (for example 3 years) at the next

renewal point. We have not formed a view on whether 3 years should be the maximum length of a licence, but we note that in other licensing regimes, such as the Security Industry Authority, licences are issued for 3 years. We would welcome views on whether this progression, with a maximum of 3 years is an appropriate model to adopt, or whether respondents consider longer licences ought to be considered.

- 4.10 In this scenario a licensing fee would be payable each time a licence was issued. This would cover the cost of the licence renewal process.
- 4.11 We would also welcome views on whether additional checks ought to be carried out on those licence holders whose compliance has resulted in the potential to issue a longer licence. This may provide additional assurance of the decision to issue a longer licence. For example, currently we do not re-check licence holders against information held by other Government Departments, unless information received suggests that there may be non-compliance with the regulations they control. We could introduce such checks for every licence holder to be granted a longer licence period, or on a random percentage basis.
- 4.12 In the extended licence model, we also consider that there needs to be a consequence for identified non-compliance. This would also create a pressure for maintaining compliance.
- 4.13 If a licence holder is found to have breached critical licence standards then, as now, revocation should be considered. However, for labour providers whose non-compliance would only result in the issue of additional licence conditions (ALCs) there should be additional consequences. We consider that this may be equivalent to losing an insurance no claims bonus, and having to re-earn it.
- 4.14 The table below illustrates how longer licences might be impacted when non-compliance is identified, once a licence is revised to add ALCs:

<b>Length of licence</b>	<b>ALC imposed in Year 1</b>	<b>ALC imposed in Year 2</b>	<b>ALC imposed in Year 3</b>
<b>1 year</b>	Renew for 1 year		
<b>2 year</b>	Revert to 1 year licence after elapse of 1 year, requiring renewal at that point	Revert to 1 year licence at the scheduled renewal date	
<b>3 year</b>	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

## Scenario 2

- 4.15 The alternative model proposed removes the need for renewal, and renewal fees. It removes the burden of contact by the GLA, reducing administrative cost, and of the costs associated for the business in the renewal process.
- 4.16 Such a model would need to exert a similar compliance pressure to the extended licence model, where identified non-compliance reduces the length of a licence. This may operate by taking a more critical approach to non-compliance, increasing the risk of revocation, where non-compliance is identified. For example, this could result in a process where the GLA may be inclined towards revocation rather than the discretionary extension of the use of ALCs. This could be considered where the GLA considers that some ALCs are more serious than others (e.g. a breach of standard 2.1 or 2.2 is considered more serious than 7.3).
- 4.17 In those circumstances where it remained appropriate to impose ALCs the GLA will ensure it sets specific dates by which it expects ALCs to have been addressed. This may require enhancements to current practices, for example, having different deadlines dependant on the type of non-compliance, and what is considered to be a reasonable period to correct identified non-compliance. Where such deadlines are reached without corrective action being taken the GLA may consider revocation is appropriate. Alternatively, it may consider whether the use of an alternative and additional sanction might create the necessary pressure to secure correction without revocation. Further consideration of this approach would be dependent on the GLA securing additional civil sanctions. The forthcoming Defra consultations will consider this area further, but views on such approaches would be welcome.
- 4.18 Greater public awareness of labour providers in such situations would further assist in exerting a pressure for compliance, and this is considered in section 5.

### **Questions for consultation**

**8 Do you think the renewal process should remain annual or that longer licensing periods should be contemplated?**

**9 Do you agree that those labour providers who demonstrate a longer history of compliance should have longer licences? If so:**

**(a) what do you consider the maximum length of such licences ought to be?**

**(b) what additional controls/checks, if any, do you consider appropriate?**

**10 Do you consider that the renewal process should be removed altogether? If so what additional controls/checks, if any, do you consider appropriate?**

## 5. The Public Register and Active Check process

5.1 In this section we consider a number of changes to increase transparency regarding the status of a GLA licence holder. We consider that the proposals below could act as a compliance pressure to maintain adherence to the standards, which may also positively impact and reduce the level of enquiries and Freedom of Information Act requests concerning the precise status of licences held by particular companies.

5.2 The proposals in this section cover the following areas:

- Enhancing the public register to detail any additional licence conditions on a licence
- Identifying whether a particular licence is subject to appeal
- Identifying on the public register the outcome of an appeal, for a limited time period
- Amending the active check process to notify when there are changes to a licence status as detailed above

5.3 In the preceding sections the GLA set out its proposals for reducing the burden of inspection, and proposals to change the renewal process to provide an “earned recognition” benefit for compliant labour providers. It is for consideration as to whether with this should come greater responsibility to demonstrate compliance, and accept the need for greater openness regarding the status of a licence.

### Public Register

5.4 Currently the public register provides details of a licensed company. It also identifies whether a particular company has applied for a licence, or whether, having been licensed, it is classed as a new business (i.e. it had not operated in the GLA’s regulatory sector before). The register does not currently clearly advise whether:

- A licence holder has additional licence conditions
- Has been revoked without immediate effect, and appealed
- Whether a labour provider has lost its appeal

5.5 If the public register were enhanced to provide details of the additional licence conditions on a licence we consider that the labour provider would be more likely proactively to resolve, and correct, the identified areas of non-compliance. It would create a pressure to raise the level of compliance within the industry. We also consider that such a change would provide greater openness and information for labour users. Labour users will want to contract with fully compliant labour providers, and those that are non-compliant will therefore work towards compliance, and the removal of the additional licence conditions in order to be able to compete on a level playing field.

5.6 Changes to the public register to address this proposal could either be:

- A tick box to indicate that a labour provider had active additional licence conditions, or
  - A table that documented the non-compliant licence conditions, or provided a copy of the licence (which details the additional licence conditions within the licence).
- 5.7 When the GLA revokes a licence without immediate effect the licence holder can continue to trade until an appeal as if the licence remained fully in force. If the public register is enhanced to include additional licence conditions, but not the status of those who are subject to revocation, an unintended consequence of the approach might be that revoked licence holders may secure contracts over those licence holders who have additional licence conditions. Therefore, it appears appropriate to be more open on the precise status of licence holders in this situation.
- 5.8 In the GLA's experience a licence holder who is revoked without immediate effect often appeals so that they can legally continue to trade until an appeal hearing, and in parallel re-applies for a licence having corrected the non-compliances that led to the revocation decision (NB: this may be a situation in which it is necessary for an application inspection under any revised approach). Once it is confirmed that the non-compliances have been corrected, and a licence is issued, the appeal is most often withdrawn.
- 5.9 If the public register were to indicate whether a licence was subject to revocation proceedings labour users would be able to make contractual decisions with the full knowledge of the potential impacts and risks to their business. This, in turn, may have a further benefit for workers. Labour users could make contingency plans to avoid disruption to their business.
- 5.10 Such contingency plans could assist and enable workers to be transferred temporarily or permanently to the labour user or a different labour provider, if required in such situations..
- 5.11 The proposed change to the public register would show when a licence status changes from:
- Licensed to licensed with additional licence conditions,
  - Licensed with additional licence conditions to licensed
  - Licensed (with or without ALCs) to revoked without immediate effect.
- 5.12 Where a revocation without immediate effect comes into force, in the absence of an appeal, or after the appeal decision, or if the revocation is with immediate effect, the licence holder is removed from the register. This can occur immediately. The absence of any record on the register has raised questions from labour users attempting to identify what has happened to a licence holder, and whether it is legal to continue to use them or not.
- 5.13 The GLA provides a separate register of those licence holders that have been formally revoked on its website, updated on a regular basis. However, the GLA could improve its service to stakeholders if revocations were shown on the public register for a limited period of time, or on an ongoing basis. This would be an automatic, more immediate,

and accessible process if the public register also supported enhanced information for those interested in the status of particular licence holders, updated by changes to the licensing system.

5.14 If the public register was to be enhanced for this purpose it would show a licence holder as "revoked" when:

- A licence holder that was "revoked without immediate effect" failed to appeal, 20 days after the original GLA decision was made
- When an appeal upholds a GLA decision
- When a decision to "revoke with immediate effect" was made

### **Active Check process**

5.15 If each of these proposals were implemented it would also be appropriate to enhance the active check process. The active check process is a GLA service to stakeholders providing an update when the status of a licence holder changes. This assists labour users in meeting their legal responsibilities to take reasonable steps to ensure they continue to only use licensed labour providers. Further information on the current active check process and the guidance on reasonable steps checks can be found at: <http://gla.defra.gov.uk/Information-For-Labour-Users/Active-Check-Service/>

5.16 Such enhancements would be to trigger an active check notification to those companies and individuals that had registered an interest in a particular licence holder when:

- Additional licence conditions were imposed
- Additional licence conditions were removed

5.17 A licence status changed to "revoked without immediate effect", or if it was reversed back to licensed following appeal, should also trigger active checks that are clear what change(s) had actually occurred.

### **Questions for consultation**

**11 Do you agree that the public register should be enhanced?, to include:**

- (a) details of additional licence conditions, and if so
- (b) whether such details should list the specific areas of non-compliance by reference to the standards
- (c) details of which labour providers' status has changed to "revoked without immediate effect"
- (d) To show those that are formally revoked, and if so
- (e) what period of time revoked licences should be displayed as such on the public register

**12 Do you agree that the active check process should be enhanced to provide greater detail of changes to a licence status, and which may appear on the public register?**

## 6. Consultation Questions

6.1 Below is a list of the consultation questions. Please answer as many as you wish. Furthermore, please feel free to comment or make proposals on issues not explicitly covered in this consultation document. It would be helpful if you could explain the reasons for your answers.

- 1 Do you agree that the GLA should adopt a risk based approach to determine whether an inspection is required on receipt of an application?
- 2 Are there any specific situations in which you consider an inspection should always be required?
- 3 Do you think there are any specific situations in which an inspection of an applicant should never be required ?
- 4 Do you consider the list current Government organisations consulted by GLA is adequate, or do you think that the GLA should seek information from other organisations? If so please indicate which organisation(s) you consider appropriate?
- 5 What information do you believe the GLA should be seeking from Other Government Departments or other organisations
- 6 What documents do you consider the GLA should seek in place of an application inspection, which may also assist in determining whether an inspection should occur (which may include industry audits)?
- 7 What controls do you consider are necessary to ensure that an objective and reliable assessment of compliance can be made, including an assessment of the competency of the Principal Authority?
- 8 Do you think the renewal process should remain annual or that longer licensing periods should be contemplated?
- 9 Do you agree that those labour providers who demonstrate a longer history of compliance should have longer licences? If so:
  - (a) what do you consider the maximum length of such licences ought to be?
  - (b) what additional controls/checks, if any, do you consider appropriate?
- 10 Do you consider that the renewal process should be removed altogether? If so what additional controls/checks, if any, do you consider appropriate?
- 11 Do you agree that the public register should be enhanced?, to include:
  - (a) details of additional licence conditions, and if so
  - (b) whether such details should list the specific areas of non-compliance by reference to the standards
  - (c) details of which labour providers' status has changed to "revoked without immediate effect"
  - (d) To show those that are formally revoked, and if so



(e) what period of time revoked licences should be displayed as such on the public register

- 12 Do you agree that the active check process should be enhanced to provide greater detail of changes to a licence status, and which may appear on the public register?

## 7 How to Respond

- 7.1 The consultation period began on **.21 January 2013** and will run until **15 March 2013**. Please ensure that your response reaches us by that date. Further copies of this document can be found at [www.gla.defra.gov.uk](http://www.gla.defra.gov.uk). Please send consultation responses to:

Application and inspection consultation  
Gangmasters Licensing Authority, PO Box 10272, Nottingham, NG2 9PB

Telephone: 0845 602 5020  
Fax: 0115 959 7050  
Email: [consultation@gla.gsi.gov.uk](mailto:consultation@gla.gsi.gov.uk)

- 7.2 A list of those being consulted is available on the GLA website ([www.gla.defra.gov.uk](http://www.gla.defra.gov.uk)). If you have any suggestions of others who ought, or who may wish to be involved in this process, please contact us.
- 7.3 The information you send us may need to be passed to colleagues within the Gangmasters Licensing Authority and published in a summary of responses received to this consultation. We will assume that you are content for us to do this, and that if you are replying by e-mail, your consent overrides any confidentiality disclaimer that is generated by your organisation's IT system, unless you specifically include a request to the contrary in the main text of your submission to us.
- 7.4 Please ensure that if you want your name or response to be kept confidential, you state this clearly in your response. Confidential responses will be included in any statistical summary of numbers of comments received and views expressed.
- 7.5 A summary of responses will be published following the end of the consultation exercise on <http://gla.defra.gov.uk/Who-We-Are/Consultations/>.

### Related consultation

- 7.6 Defra will be consulting on:
- The Exclusion regulations
  - The constitution of the GLA Board, and
  - Options for new sanctions
- 7.7 The DEFRA consultation will be announced shortly. You can find more information regarding Defra consultations at:
- <http://www.defra.gov.uk/consult/>

## **Appendix 1      Written Ministerial Statement by Jim Paice, 24 May 2012**

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The Gangmasters Licensing Authority (GLA) has been considered under the Employment Theme of the Government's Red Tape Challenge. Last December, we announced that the Red Tape Challenge Ministerial Star Chamber had endorsed the need for the GLA to continue to enforce protection for vulnerable workers, while requiring it to look at reducing burdens on compliant operators. The GLA has been further considered within the Red Tape Challenge and I am today announcing the outcome of that process.

The GLA has done a great deal of valuable work since it was formally constituted on 1 April 2005 with cross-Party support. Seven years on, it is a good time to see where improvements can be made so that the Authority can become more focused on the worst excesses in the areas it regulates and work more closely with other agencies that tackle crime. I therefore propose to bring forward measures, including where necessary legislation, subject to public consultation, which will:

- Ensure GLA targets suspected serious and organised crime by working more closely with the Serious Organised Crime Authority and other specialist law enforcement agencies;
- Ensure that evidence of worker exploitation by unlicensed gangmasters or licence holders will contribute effectively to continued successful investigation and prosecution of organised crime groups and assist in the earlier identification of the victims of human trafficking;
- Reduce the burden on compliant labour providers and labour users and focus forensically on gross abuse of workers by unscrupulous gangmasters - whose crimes include tax evasion, trafficking, health and safety negligence and other serious crimes;
- Streamline the process for issuing licences and remove the general requirement for an application inspection and associated fee, aim to reduce fees and charges and extend the licensing period from twelve months to two years or more for highly compliant businesses;
- Remove from scope of the GLA, activities or sectors which are low risk, including:
  - apprenticeships
  - forestry
  - cleaning contractors
  - land agents; and

- voluntary workers.
- Provide for those with exclusive rights to use the seashore for shellfish cultivation to be able use their workers to grade and gather shellfish stock without needing to be licensed as a gangmaster. This measure would leave fully in scope of the Act activities such as the gathering of cockles from public shellfish beds;
- Introduce administrative fines and penalties for low-level and technical minor offences, including a measure similar to a Repayment Order to achieve rapid reimbursement to an exploited worker of wages or other payment which has been removed;
- Adopt an approach in respect of a labour user who uses an unlicensed gangmaster proportionate to the circumstances of the offence, for example the financial advantage gained and whether or not there has been abuse of the workers; and
- Amend the structure of the Board of the GLA and introduce a smaller Board to provide clear strategic leadership and direction to the GLA.

These changes will free up resources within the GLA to provide for greater effort to be focused on identifying and eliminating criminality in those sectors and activities covered by the Authority, such as food processing, where exploitation of the most vulnerable workers is known to exist. In addition it will remove an estimated 150 current licence holders from the scope of the GLA, saving around £60,000 a year, and potentially reduce annual inspection charges from £300,000 a year to zero.

## Appendix 2 Background: regulatory principles and risk based approach

A2.1 Before the establishment of the GLA in 2005 the “Hampton” report: “Reducing administrative burdens: effective inspection and enforcement”, made a number of recommendations to Government regarding regulators, and to suggest improvements in the way that regulatory enforcement was conducted. As a regulator specifically in the report the GLA was expected to have regard to the recommendations once established, which included.

### Recommendation 1:

The review recommends that all regulatory activity should be on the basis of a clear, comprehensive risk assessment. The risk assessment should:

- be open to scrutiny;
- be balanced in including past performance and potential future risk;
- use all available good quality data;
- be implemented uniformly and impartially;
- be expressed simply, preferably mathematically;
- be dynamic not static;
- be carried through into funding decisions;
- incorporate deterrent effects; and
- always include a small element of random inspection.

A2.2 In recognising that the GLA did not have information on those organisations and individuals that it would regulate its licensing approach incorporated an application inspection to provide an assessment of compliance against the GLA’s licensing standards. The GLA’s licensing standards are currently in their third version<sup>2</sup>, but continue to reflect UK legislation to which compliance is expected.

A2.3 Nonetheless, the GLA undertook several studies to establish whether a reliable risk assessment profile could be developed and applied with sufficient assurance to reduce the need for an initial application inspection.

A2.4 There have been a number of GLA Board discussions on the operation of a risk profile to determine whether an inspection on application should occur<sup>3</sup>. In the developmental stage of

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<sup>2</sup> <http://gla.defra.gov.uk/PageFiles/1020/Licensing%20Standards%20-%20May%202012.pdf>

<sup>3</sup> Previous GLA Board papers on risk:

• 3/6.2	Licensing and Application Inspections	24/06/2005
• 6/7.1	Developing a GLA Application Risk Profile	24/10/2005
• 10/7.1	Risk based approach	26/04/2006
• 13/7.1	Risk profile	18/01/2007
• 15/6.1	Risk profile	21/06/2007
• 16/7.1	Risk profile	18/10/2007

the GLA's operational model attempts were made to develop a risk profile model, to fully comply with the requirements of the Hampton principles. After live operations a further review was undertaken. The two reviews, by IBM and Detica, respectively, (Board paper 6/7.1 and 15/6.1 respectively) identified that insufficient information existed of the regulated community to enable an effective risk model to be implemented.

- A2.5 If a risk profile had been implemented the risk existed that organisations and individuals that were not compliant may have appeared to be when marked against the risk profile, and avoid further inspection. Conversely, those that appeared to present a risk of non-compliance based on the risk profile might be subject to inspection, but be proven to be compliant. Thus an unreliable risk profile would increase the risk of non-compliance entering the licensed community and going undetected.
- A2.6 The Hampton report led to the [Legislative and Regulatory Reform Act 2006](#). Section 22(1) of that Act established the statutory Compliance Code, which was issued in 2007 by the Better Regulation Executive. Section 24(2) established that an Order (i.e. secondary legislation) would set out which regulators were required to have regard to the Code in their regulatory approach.
- A2.7 Part 1 of the schedule to Statutory Instrument 3544 [The Legislative and Regulatory Reform \(Regulatory Functions\) Order 2007](#) identified the GLA as a regulator to whom the Code would apply. Statutory Instrument 3548 [The Legislative and Regulatory Reform Code of Practice \(Appointed Day\) Order 2007](#) introduced the Compliance Code. Both Orders came into force on the 6<sup>th</sup> of April 2008. The Compliance Code set the following principles for regulators:

### **Risk Assessment**

*Hampton Principle: Regulators, and the regulatory system as a whole, should use comprehensive risk assessment to concentrate resources in the areas that need them most.*

### **Economic progress**

*Hampton Principle: Regulators should recognise that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection.*

## Inspections and other visits

**Hampton Principle: *No inspection should take place without a reason.***

*Inspections can be an effective approach to achieving compliance, but are likely to be most effective when they are justified and targeted on the basis of an assessment of risk. In order to ensure the effectiveness of their inspection programmes, regulators must have regard to the following provisions when determining general policies or principles or when setting standards or giving general guidance on inspections.*

Regulators should ensure that inspections and other visits, such as compliance or advice visits, to regulated entities only occur in accordance with a risk assessment methodology (see paragraphs 4.2. and 4.3), except where visits are requested by regulated entities, or where a regulator acts on relevant intelligence.

Regulators should use only a small element of random inspection in their programme to test their risk methodologies or the effectiveness of their interventions.

Regulators should focus their **greatest** inspection effort on regulated entities where risk assessment shows that both:

- a compliance breach or breaches would pose a serious risk to a regulatory outcome; and
- there is high likelihood of non-compliance by regulated entities.

A2.8 In parallel with the legislative change the Hampton report led to a programme of inspections of all regulators operated by the Better Regulation Executive within the Department for Business Innovation and Skills. The inspection of the GLA recommended that:

### **The need for automatic inspections to accompany licence applications should be reviewed**

The Review Team found that the GLA conducts few routine inspections, except where new applications have been received for licences to operate as a labour provider in one of the regulated sectors. The requirement to inspect businesses in all such cases can be costly in resource terms, and yield less meaningful information than other inspections (for instance, if they are targeted at businesses without an established compliance record from operating in similar, but unregulated sectors).

The GLA has kept this issue under review for some time, but the Review Team believes that a more differentiated approach should be introduced to allow for a clearer focus on the main risks involved. The Review Team were encouraged by the evidence that they saw that the GLA had already started work towards such an approach.

## Appendix 3 Statistical analysis

### Analysis of the adverse OGD check cases

A3.1 The GLA's review of its data has identified that the existing OGD check system is effective, but there is room for improvement through other sources of information or documentary checks that should improve assurance that the correct cases are targeted for inspection review by increasing the identification of risk, as our analysis has identified.

**Table 1: Potential non-compliance indicated by OGD check responses**

Year	Applications with adverse OGD reports	Applications with no adverse OGD reports	Total applications	% risk of non-compliance identified at OGD stage
2009-2010	71	192	263	27%
2010-2011	65	169	234	28%
2011-2012	94	149	243	39%
Three year averages	77	170	247	31%

A3.2 It should be noted that a clean OGD check (69%) response may not be an indicator of low risk, based on results of inspections where there was a clean OGD check (see below). Conversely not all applicants with an adverse OGD check were refused a licence. Therefore the indicative level of risk is higher than 31%, but the actual level of identified risk is slightly lower. This is identified in the following information.

**Table 2: Confirmed non-compliance in cases with an indicative OGD check suggestive of non-compliance**

Year	Applications with adverse OGD refused(a)	Applications with adverse OGD licensed(b)	Applications with adverse OGD licensed with ALCs(c)	Proportion of indicative risk cases identified as actual risk  A+C/total adverse OGD	Proportion of indicative risk cases identified as actual risk  A+C/total applications
2009-2010	19	53	9	39%	11%
2010-2011	8	56	7	23%	6%



<b>2011-2012</b>	<b>12</b>	<b>76</b>	<b>10</b>	<b>23%</b>	<b>9%</b>
<b>Three year averages</b>	<b>13</b>	<b>62</b>	<b>9</b>	<b>29%</b>	<b>9%</b>

A3.3 In isolation, this analysis of the adverse OGD check cases, to identify those with proven non-compliance outcomes suggests that if the high risk cases can be identified effectively the target for AIs can be reduced to 9%. That requires further analysis of the reasons for the adverse OGD outcome, and whether that may also have been the reason for the refusal or ALC decision.

A3.4 Examination of the reasons for refusal and ALCs in those cases where the OGD report was adverse indicate that whilst the OGD response may be an indicator of potential risk it cannot be relied upon alone as being the basis of the eventual licence decision.

### **Analysis of the clean OGD check cases**

A3.5 We have also reviewed the analysis of clean OGD responses that resulted in refusal, to identify whether there are any specific factors in intelligence that may assist in differentiation between compliant cases and those that appear "clean", but require further examination.

A3.6 The data suggests that the removal of some form of regulatory check beyond the current OGD check would enable non-compliant labour providers to secure a licence, in the range of 18% of all applications.

A3.7 A further examination of information held on the cases that were refused but had clean OGD checks identified that 81% held data that suggested there was a risk based on information provided by HMRC, but were subject to existing review rather than formal decisions.

A3.8 This analysis suggests that although the number of cases with adverse OGD checks does not correlate with the reason for refusal or ALC directly HMRC is the most reliable source of information, and that is further evidenced from the information held in those cases with an otherwise clean OGD check.

A3.9 A further review of the grounds for refusal identified that licensing standards 2.1, 2.2, 2.3 and 7.3 having the highest frequency of identified non-compliance areas. On this basis GLA should seek additional information in these areas in order to increase confidence in compliance of licence applicants.

## **Analysis of the Total confirmed risk**

**Table 3: Total confirmed risk**

<b>Year</b>	<b>Confirmed non compliance with adverse OGD resulting in refusal or ALC</b>	<b>Confirmed non compliance without adverse OGD resulting in refusal or ALC</b>	<b>Total confirmed non-compliance (a) + (b)</b>	<b>Proportion Total confirmed non-compliance compared to total applications</b>
<b>2009-2010</b>	<b>26</b>	<b>39</b>	<b>67</b>	<b>25%</b>
<b>2010-2011</b>	<b>15</b>	<b>48</b>	<b>63</b>	<b>27%</b>
<b>2011-2012</b>	<b>22</b>	<b>47</b>	<b>69</b>	<b>28%</b>
<b>3 year average</b>	<b>21</b>	<b>45</b>	<b>67</b>	<b>27%</b>

A3.10 The combination of the OGD check plus the application inspection has identified on average 27% non-compliance in the application volumes. Some enhancement of the process is therefore required to improve assurance that the applications with the greatest risk are identified and subject to greater examination than those where there is confidence in the compliance of the applicant

A3.11 If the GLA has to identify the 27% it is essential that it is able to discern any differentiating factors in the 9% adverse OGD cases where the outcomes was refusal or ALC. This will enhance its ability to target the highest risk cases. This might be clear without an inspection in certain cases. Together with the additional random 10%, and improved information checks, it is projected that the volume of inspections will be within the range of 25-33%.

A3.12 The GLA recognises that any risk profile which determines which cases appear suitable for further review and/or inspection needs to be maintained under constant review. This is necessary to ensure that the indicators used to select risk do not result a "false" outcome, where the risk profile "hits" compliant cases as this may incorrectly suggest that the compliance level is effectively higher, providing false confidence levels. That is why the random element of inspection will assist in the continuous improvement and review of the relevant indicators used to identify high risk cases.

## Appendix 4 Comparison of length of licences by Fee Band,

### Notes:

A4.1 The table below shows the number of current licence holders, by band, that have held licences in excess of 1 year.

Period licence held	6	5	4	3	2	1	0
<b>Band A</b>	7	3	4	3	1	1	3
<b>Band B</b>	8	5	7	1	2	1	0
<b>Band C</b>	29	39	29	13	11	16	16
<b>Band D</b>	87	202	112	105	118	169	194
<b>Total</b>	<b>131</b>	<b>249</b>	<b>152</b>	<b>122</b>	<b>132</b>	<b>187</b>	<b>213</b>

A4.2 **Band A** 82% have currently held licences for 2 years or more

A4.3 **Band B** 96% have currently held licences for 2 years or more

A4.4 **Band C** 79% have currently held licences for 2 years or more

A4.5 **Band D** 63% have currently held licences for 2 years or more

A4.6 **Total** 66% have currently held licences for 2 years or more

## **Appendix 5                      Impact Assessment**

### **Summary: Intervention and Options**

**Contact for enquiries:**     [consultation@gla.gsi.gov.uk](mailto:consultation@gla.gsi.gov.uk), 0845 602 5020

#### **What is the problem under consideration?**

A5.1 This consultation reviews the current application inspection process, and related procedures.

#### **What are the policy objectives and intended effects?**

A5.2 To assess whether the GLA can effectively implement a lighter touch regulatory approach, removing the need for automatic application inspection, and introducing related procedures to ensure robust control and compliance in the regulated sector.

#### **What policy options have been considered?**

A5.3 Options are considered throughout the consultation document.

#### **When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?**

A5.4 Any changes that are implemented will be reviewed 18 months after coming into force to review their effectiveness.

#### **Consultation stage sign-off**

A5.5 I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the options.

Signed by



**Margaret McKinlay, GLA Chair**

**Paul Broadbent, CEO**

## **Summary: Analysis and Evidence**

### **Application Costs**

- A5.6 The removal of the need for an inspection on application in all cases, together with the removal of the associated fees, provides a direct and indirect cost benefit to applicants for a GLA licence. Whilst some labour providers will continue to be inspected, based on risk analysis, they will not be required to pay the fees currently required.
- A5.7 A change in approach will also carry organisational cost reductions for the GLA, which will enable it to re-focus those resources on those cases determined to be of highest risk, suggestive of forced labour and serious exploitation.
- A5.8 The proposals to amend the renewal procedures, whether by removing the requirement to renew, or by extending the licence period for compliant businesses will provide further organisational and financial cost savings for licence holders on an ongoing basis.
- A5.9 The amendments to the renewal process will also free GLA resources from the current administrative procedures to support renewal and enable their re-deployment to assist in those new procedures that test compliance, assist assurance, and remove the need for inspection.

### **Benefits**

- A5.10 Benefits for business will be a reduction in fees associated with the application and renewal processes, and related costs incurred by compliant businesses that may no longer be required to undergo an application inspection.

### **Key assumptions**

- A5.11 The figure of 1186 licence holders has been used as the baseline for the calculations in this consultation paper. That figure was produced from a date in November 2012. However the figure is in constant flux as new applications are received, and others cease trading. Therefore the figure has been used to illustrate the modelling in the paper, but does not represent a fixed position.

### **Direct Impact on Business**

- A5.12 It is estimated there will be negligible new administrative burdens associated with any additional requirements to provide documentation, because currently labour providers are expected to provide such documentation on an inspection. The identified documents sought are a sub-set of those that would be expected to be shown on inspection, and therefore there would be a reduced impact on a labour provider to prepare and send the documentation requested.

### **Evidence Base**

- A5.13 Please see appendix 3 and 4.

## Specific Impact Tests Checklist

Type of testing undertaken	Impact: Yes or No
Equality Impact Assessment	No
Competition Assessment	No
Small Firms Impact Test	No
Greenhouse Gas Assessment	No
Wider Environmental Issues Impact Test	No
Health and Well-Being Impact Test	No
Human Rights Impact Test	No
Justice System	No
Rural Proofing	No
Sustainable Development Impact Test Guidance	No

## Summary of cost savings

A5.14 The table below provides a summary of the cost savings set out in parts 1 and 2 of the assessment. Two columns are provided below, to illustrate the impact of the different renewal scenarios

	Scenario 1	Scenario2
<b>GLA cost reductions:</b>		
AI savings (scheduling)	£1,146	£1,146
AI savings (inspection)	£127,125	£127,125
Renewal resource saving (GLA)	£8318	£15061
<b>Total GLA cost reductions</b>	<b>£136,589</b>	<b>£143,332</b>
<b>Savings to business:</b>		
Fee income reduction (application inspection fee)	£333000	£333000
Fee income reduction (renewal)	£381,900	£683,600
Renewal resource saving (LP)	£14817	£26828
<b>Total savings to business</b>	<b>£729,717</b>	<b>£1,043,428</b>

**NB: Scenario 1 Extended licence period; Scenario 2 removal of the licence renewal process**

## **Appendix 6                    Consultation Criteria**

A6.1 Although this is a non-statutory consultation, this consultation is being conducted in line with the Code of Practice on Consultation. The Code of Practice is available here:

[www.bis.gov.uk/policies/better-regulation/consultation-guidance](http://www.bis.gov.uk/policies/better-regulation/consultation-guidance)

A6.2 If you have any concerns regarding this consultation, please write to:

Complaints  
Gangmasters Licensing Authority  
PO Box 10272  
Nottingham  
NG2 9PB

[complaints@gla.gsi.gov.uk](mailto:complaints@gla.gsi.gov.uk)