

GLA 35 9/1 GLA Consultation: Proposals to implement a risk based approach to GLA licence applications

17 October 2012

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 can have unintended consequences that may 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 UK PLC by, for example, circumventing tax regulations, or withholding wages. 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 regulating employers conduct, and the workplace.

In order to discharge this responsibility it is essential that the GLA does not become a "tick box" regulator, concentrating on the regulation of those labour providers who are generally compliant, and instead increasingly applies 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 reduce the burdens to provide information, wherever possible. Together this information assists the GLA to identify risk. We believe this is the right approach and we need to build this approach 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. That challenge will result in some legal changes in the longer run too. However, there are some things we can do without the need for legislative change, and we can implement them building on the views of stakeholders. Our first priority therefore is to review how we protect the gateway to a licence, and how we can move away from compulsory application inspections to a risk based approach that provides assurance, and may also reduce financial cost to labour providers.

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 rogues that create the greatest harm, reduce burdens on the compliant, and continue to regulate in an effective manner that maintains compliance.

Margaret McKinlay

Chair

Ian Livsey

Chief Executive Officer

1. Introduction

- 1.1 The GLA was created by statute in 2004, and commenced its operations in 2006. Its Mission statement established its focus:
- 1.2 Since the commencement of operations the GLA has collated over **24122** intelligence reports from workers, labour providers, labour users, the public, and other Government enforcement agencies and the police. Together this information provides the intelligence that assists the GLA in focusing its activity where the most severe forms of exploitation are indicated.
- 1.3 In order to remain effective it must continue to evolve, making use of new sources of intelligence, and working closely with specialist agencies to tackle entrenched and hidden forms of exploitation. Its future focus will support that objective but that also requires a review of its current practices to increase its flexibility to respond to the highest risk cases.
- 1.3 When the GLA came into existence the Government announced that it would accept the report by Philip Hampton: "Reducing Burdens on business". That report established a number of principles for regulators to consider in the development of their approaches. Specifically it suggested that risk assessment should be at the heart of a regulator's approach, and that there should be "no inspection without reason".
- 1.4 The challenge set to regulator's in this report have been developed further by the Government's Red Tape Challenge, reviewing a regulator's legislation, and how it consequently implements its legislative responsibilities. The GLA demonstrated the proportionality and importance of its role in that process, but inevitably further change was recommended, which the GLA is now developing.
- 1.5 The conclusions on how the GLA should operate were announced in the Ministerial statement on the post – Red Tape Challenge (RTC) approach, which was issued on [24 May 2012](#). It stated, amongst other expectations, that GLA approach would include changes to:

"Streamline the licence application process, including no longer automatically making compulsory inspections of businesses when they first apply";
- 1.6 This consultation focuses on that specific aspect, and proposals for change, on which views are sought. The RTC approach, and the GLA proposals, are in keeping with the Hampton principles, the statutory compliance code, and the recommendations of the farming task force (the MacDonald Report); to implement a risk focused strategy towards the need for inspections on application for a licence and for making use of "earned recognition" to reduce the regulatory burden on businesses.
- 1.7 Since August 2011 GLA has operated a pilot scheme as regards the issuing of licences in the forestry sector based on a light touch approach. The approach GLA is proposing for the issuing of new licences builds on procedure adopted in the Forestry Pilot, which the Farming Task Force report recommended should be extended to other areas.

2. The regulatory landscape

- 2.1 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.
- 2.2 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.
- 2.3 Nonetheless, the GLA undertook several studies to establish whether a reliable risk profile could be developed and applied with sufficient assurance to reduce the need for an initial application inspection.
- 2.4 There have been a number of GLA Board discussions on the operation of a risk profile to determine whether an inspection on application should occur¹. In the developmental stage of 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.
- 2.5 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.
- 2.6 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.
- 2.7 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

• 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	26/4/2006
• 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 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 6th of April 2008.

- 2.8 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.

- 2.9 The Ministerial statement on the "Red Tape Challenge" commits the GLA to reviewing processes that may streamline its approach, and reduce burdens for those labour providers that are compliant with its standards. That requires the GLA to consider proposals for change to its current application process.
- 2.10 The current process, in brief, requires a labour provider to complete an application form, pay an application and application inspection fee, undergo checks against information held elsewhere by Government agencies, and be subject to an application inspection against the licensing standards before a licence decision can be made.
- 2.11 As a labour provider may not trade without a licence the benefits of an application inspection can sometimes be limited. As they should not be trading in the GLA's sector a full assessment of compliance may not be possible, but it may assist in determining how the company intends to operate, and whether it is sufficiently knowledgeable to implement procedures that will be compliant with the licensing standards. The GLA may consider how a labour provider operates outside the regulated sector, if it is already trading, to assist in that determination. If it is identified that the labour provide has, or is, trading without a licence, consideration of its application may be delayed whilst any criminal offence is considered.

- 2.12 The proposals in this consultation, and the views sought, should assist in reviewing this process, and reducing burdens whilst continuing to target identified risk.

3 OGDs

- 3.1 When GLA receives an application for a licence it consults:

- HMRC
- HMRC (National Minimum Wage operations)
- Business Innovations and Skills (Employment Agency Standards inspectorate)
- HSE
- UK Borders Agency
- DWP

- 3.2 Each organisation is asked specific questions to establish whether the applicant is compliant with the legislation that they administer, which is reflected in the GLA's licensing standards, whether there are any issues with the applicant, the business or any matters that require investigation. The GLA intends to continue this process. All new applicants for a licence will be reviewed against information held within Government.

- 3.3 It will continue to operate all the Government Department checks as the continuing cornerstone of its approach. But intends to seek new sources of intelligence, and develop closer working with such organisations as the Insolvency Service to enhance the process. Other sources of information, for example, could include regular reviews of Employment Tribunal outcomes to identify any employers who had applied for a GLA licence.

- 3.4 Based on OGD checks alone, the percentage of applications which were assessed as potentially a risk which turned out to be an actual risk on inspection is 9%.

4. Earned Recognition

- 4.1 However, in addition to this, 12% of all applications which had no adverse OGD checks were refused on application inspection.

- 4.2 Therefore, we cannot rely on OGD checks alone to determine which submitted application should be refused or granted. We need a further check on each application based around the evidence submitted by the applicant in its 'earned recognition'.

- 4.3 The system of earned recognition to be introduced must therefore cover the areas of the Licensing Standards most often the cause of the refusal in the case where OGD checks were not adverse. From the analysis of the GLA data the standards most often identified in this category are:

Licensing Standard 2: Pay and Tax Matters,
specifically 2.1 & 2.2 & 2.3

Licensing Standard 7: Recruiting Workers and Contractual Arrangements,
specifically 7.3

- 4.4 It is therefore proposed that any system of earned recognition should provide evidence of compliance with these standards.
- 4.5 In addition, the competence of the nominated Principal Authority is seen as a key factor and therefore:
- Licensing Standards 1.1 & 1.2 are also to be evidenced.
- 4.6 Assessment of whether a labour provider is "fit and proper" or competent is best established through an interview with the Principal Authority. How this can be best achieved is part of the consultation.

5. Proposals for consultation

The following are the proposed consultation questions.

- Q1: *At present GLA consults with HMRC (NMW), BIS (EAS), DWP, HSE and UKBA prior to issuing a licence. Are there any other Government checks, or sources of information, respondents consider the GLA should make to improve its assessment of whether an applicant should be inspected and issued with a GLA licence?***
- Q2: *Do you agree that the Licensing Standards 2.1, 2.2, 2.3 and 7.3 should form the core of the 'earned recognition' to be submitted with an licence application?***
- Q3: *How can the GLA best assess whether the Principal Authority is competent, and whether they are fit and proper to hold a licence, as required by Licensing Standards 1.1 & 1.2?***
- Q4: *Would an approach based on self declaration by an applicant be appropriate and what declarations would you suggest should be required of an applicant?***
- Q5: *Do you consider that submitting a portfolio of evidence is appropriate***
- Q7: *What forms of documentary evidence do you consider ought to be included in this portfolio that provide assurance of a LPs compliance?***
- Q8: *Do you consider the portfolio of evidence should be requested in every application, or only where Government check information suggests a risk, where a portfolio of evidence may definitively determine whether an inspection is, or is not necessary?***
- Q9: *Do you think the applicant should be able to present any information, or would that lead to decisions made on inconsistent and non-comparable bases.***
- Q10: *Do you consider compliant labour providers should be entitled to a longer licence, and if so, do you consider that a 2 year, and a maximum 3 year licence are appropriate***
- Q11: *Are there any other comments or proposals you wish to make?***

6. Responses

Responses to this non-Statutory Consultation paper should be sent to consultations@gla.gsi.gov.uk or by post to the GLA at PO Box 10272 Nottingham NG2 9PB by [date].

A formal impact assessment will be published with the consultation.