

GLA Licensing Standards Consultation

August 2011

Contents

1.	Introduction.....	3
2.	Proposed changes to the licensing standards.....	5
3.	Other issues for discussion.....	14
4.	Consultation questions.....	20
	Annex A: GLA licensing standards.....	23
	Annex B: Impact Assessment.....	37

DRAFT

1. Introduction

- 1.1 This consultation reviews the Gangmasters Licensing Authority (GLA) Licensing Standards. We are interested to hear how the standards could be improved. In conducting this review, the GLA's objective is to ensure the standards safeguard the welfare and interests of workers, levels the playing field for legitimate licence holders as well as reducing the burden on business.
- 1.2 The consultation document is split into two main parts: chapter two details changes we are intending to make. Chapter three highlights additional issues where we have not determined our preferred approach.
- 1.3 A number of questions are included throughout the document. Answer as many as you would like, but please do not feel restricted to issues covered in the questions. All comments and proposals submitted are greatly appreciated.
- 1.4 The closing date for responses is **[INSERT DATE]**. Please note: this consultation does not seek views on the GLA licence fees.

Background

- 1.5 The Licensing Standards set out the conditions that must be complied with to qualify for and retain a licence to operate in the sectors covered by the Authority's licensing scheme. The current licensing standards, which were issued in April 2009, are at annex A. The standards comprise the Gangmasters (Licensing Conditions) Rules 2009 and other relevant legislation.
- 1.6 Each standard is scored according to its seriousness. GLA inspections test the relevant licensing standards. This results in an overall score. The scoring system determines whether applicants and licence holders have passed or failed an inspection. The fail score is currently 30 points. The categories and associated scores are:
- Critical: 30 points
 - Non-critical: 8 points (with one standard, 1.4, scoring 16 points)
- 1.7 Licences may be issued with additional licence conditions (ALCs), which specify identified non-compliances for specific licensing standards and the period in which they need to be corrected. At present, ALCs are usually applied for non-Critical standards. This allows up to three ALCs before the 30 points fail threshold is reached.
- 1.8 As of [INSERT DATE], there are [INSERT NUMBER] licence holders. [INSERT NUMBER] have ALCs.

Next Steps

- 1.9 Subject to responses received, we intend to implement any changes to the licensing standards by April 2012.

2. Proposed Changes to the Licensing Standards

2.1 This section outlines the areas of the standards which the GLA intends to revise. We would welcome views on these proposed changes.

Fit and proper: how future applications are considered

2.2 Licensing Standard 1.1 requires that the licence holder, Principal Authority and any person named or otherwise specified in licence must at all times act in a fit and proper manner. The accompanying explanatory note to the Standard explains that GLA will usually refuse applications in the following circumstances:

- Once an applicant is found to be not fit and proper for at least two years from the date of that fit and proper decision, or
- Where an applicant has been refused or revoked twice within a two year period, except on fit and proper grounds, for at least two years from the date of the second decision.

2.3 We also consider refusing an application in the following circumstances:

- Once an applicant is found to have connected to someone who has been deemed to be not and proper for two years from the date of the fit and proper decision, or
- Where an applicant is found to have been connected to someone who has been refused or revoked twice within a two year period on fit and proper grounds for two years from the date of the second decision.

2.4 This policy of how we will treat applications in the above circumstances represents a powerful statement that it is unacceptable to not act in a fit and proper manner. However, refusing applications where the person, or person connected to the applicant, has previously been found not fit and proper means the policy is limited to failures against standard 1.1. That means non-compliance against other Critical standards (for example standard 3.1 and not subjecting workers to threats, physical or mental mistreatment) do not count towards the approach of automatically refusing future applications.

2.5 We propose the policy of automatically refusing applications where the applicant, or person connected to the applicant, has been found not fit and proper is expanded to include failures against other Critical standards. We would welcome views on what other Critical standards should be taken into account.

2.6 We are also proposing to expand the policy to include previous refusals and revocations where the licensing standards score is 100 points or more. Such points score represents an exceptionally high level of non-compliance and it seems appropriate to include this in any policy where we take into account previous behaviour in deciding to automatically refuse future applications.

Questions for consultation

- 1. Do you agree that the policy for automatically refusing future applications should be expanded to include other Critical failures and scores of 100 points or more?**

If you do agree that the policy should be expanded, we would welcome views on what other Critical standards should be included.

Fit and proper: GLA inspections

- 2.7 Paragraph 6 of the schedule to the Gangmasters (Licensing Conditions) Rules 2009 requires that "a licence holder must permit the Authority to inspect the business at any reasonable time". We propose to make explicit in the Licensing Standards that failure to comply with this requirement may lead to a breach of standard 1.1.

Questions for consultation

- 2. Do you agree a explicit reference to paragraph 6 of the schedule to the Gangmasters (Licensing Conditions) Rules 2009 in Licensing Standard 1.1?**

Notifying the GLA of Changes in Details

- 2.8 Licensing Standard 1.4 stipulates that a licence holder must notify the GLA within 20 working days if:
- the Principal Authority (PA) changes,
 - the trading name changes, or
 - the PA, directors, company secretary or partners are convicted of any criminal offence or receive an alternative sanction.
- 2.9 Failure to comply with this standard results in 16 points being added to the licence. These 16 points remain on the licence for a 12 month period and will count towards any subsequent inspection score within that period. The standard is failed unless the licence holder can provide a reasonable explanation for why they have not notified the GLA within the timescale required.
- 2.10 A licence holder should notify the GLA if any directors, company secretary, partners or other individuals named on the licence change and if any contact details change (for example, the address, email or telephone). However, no points are added to the licence for failing to notify the GLA of such changes.

- 2.11 We are proposing to have a sliding scale of points for failing to notify the GLA of changes. We consider that failing to notify us that the PA has changes is a very serious matter. Rule 2 of the Gangmasters (Licensing Conditions) Rules 2009 defines "Principal Authority" as the individual responsible for the day-to-day management of a business. Given the importance of this position, it is imperative that the person is properly authorised by the GLA. Failure to notify the GLA of a change in PA may mean an unauthorised, and potentially not fit and proper, person is running the business. Given this potential risk, we consider that 16 points for failing to notify us of a change in PA is insufficient. Therefore, we propose to make it a Critical failure, with an associated score of 30 points, for not notifying the GLA of a change in PA. It would only be a failure if the licence holder could not provide a reasonable explanation for why they had notified the GLA of the change.
- 2.12 We intend to keep the penalty of 16 points being added to the licence for failing to notify us of changes in trading name or if the PA, directors, company secretary or partners are convicted of any criminal offence or receive an alternative sanction. Additionally, we are proposing to include the sanction of 8 points being added to a licence for failing to notify the GLA if any directors, company secretary, partners or other individuals named on the licence change and if any contact details changes. We consider that not having a sanction for failing to inform us of such details may result in the changes never being notified (or there may be a significant delay). Again, the standard will only be failed if the licence holder cannot provide a reasonable explanation. Similar to current process, the 8 points will remain on the licence for a 12 month period and will counts towards any subsequent inspection score in that period.
- 2.13 We are also proposing to make it an explicit requirement that licence holder should notify the GLA if they go into administration, liquidation or become bankrupt. Such changes may have implications for the licence (for example, it may indicate non-compliance with standards, particularly standard 2.1, or the business may no longer exist, therefore it is important to remove the licence from the Authority's public register). Given the importance of this information, we are proposing to make this requirement a Critical. We proposed that licence holders should notify us of these changes within 20 working days.

Question for consultation

- 3. Do you agree with failure to notify the GLA of change in Principal Authority should be a Critical standard with a score of 30 points?**
- 4. Do you agree with introducing 8 penalty points for failing to notify the GLA of changes to contact details, directors, company secretary, partners, other individuals named on the licence?**
- 5. Do you agree it should be a Critical requirement for licence holders to notify the GLA that they are in administration, liquidation or gone bankrupt?**

Trade Union Matters

- 2.14 At present, Licensing Standard 5.3 protects the right to belong to a trade union and Licensing Standard 5.4 prohibits licence holders providing workers in industrial disputes. We propose to consolidating these standard into one dedicated standard on trade union matters so that the standard reads:

Trade Union Matters

A worker must not be prevented from taking up trade union membership nor be penalised for doing so.

A licence holder must not introduce or supply a worker:

- *to replace a worker taking part in an official strike or any other industrial action, or*
- *to do work of someone who has been transferred by the labour user to perform the duties of the person on strike or taking industrial action*

Question for consultation

- 6. Do you agree with merging Licensing Standards 5.3 and 5.4?**

Discrimination

- 2.15 Licensing standard 5.7 currently specifies that “a licence holder must not unlawfully discriminate against any worker or applicant”. Since the current version of the Standard was introduced in April 2009, the Equality Act 2010 has come into force. We propose to revise standard 5.7 so that it better reflects the protections offered by the Equality Act. We propose that standard is redrafted to make specific reference to the protected characteristics set out in section 4 of the Equality Act:

Licence holders must not discriminate against a worker or any person seeking work on the grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation

- 2.16 Standard 5.7 is currently classed as non-Critical. However, given how the law has been strengthened through the Equality Act and the seriousness of issues related to discrimination, we are proposing to upgrade this standard to Critical.

Question for consultation

- 7. Do you agree with the revised wording of Licensing Standard 5.7?**
- 8. Do you agree Licensing Standard 5.7 should be classed as “Critical”?**

Transport

- 2.17 Licensing Standard 6.4 sets out the requirements for licence holders who provide transport to workers. The standard currently stipulates that:

A vehicle used by the licence holder to transport workers must:

- *have a valid vehicle licence (tax disc), applicable MOT certificate (if required) and insurance,*
- *be in a roadworthy condition and have no obvious or identifiable defects, and*
- *carry workers in a safe manner.*

A licence holder who operates vehicles with 9 or more passenger seats used for hire and reward must:

- *have a Public Service Vehicles (PSV) Operator's licence,*
- *have documentary evidence that the vehicles are registered and maintained as PSVs and have a Certificate of Initial Fitness.*

A driver used to transport workers must:

- *hold a valid driving licence,*
- *have Passenger Carrying Vehicle (PCV) entitlement and driver Certificate of Professional Competence if driving a vehicle with nine or more passenger seats used for hire and reward, and*
- *Comply with rules covering drivers' hours and tachographs.*

- 2.18 This standard does not explicitly make clear that vehicles with 8 passenger seats or less are used for hire or reward and therefore appropriate insurance should be in place to cover such use. We propose to revise standard 6.4 to include this point.

Question for consultation

- 9. Do you agree that Licensing Standard 6.4 should be revised to include explicit reference to vehicles with 8 passenger seats or less?**

Fees and Services

- 2.19 Licensing Standard 7.3 currently requires that:

A worker must be informed in writing of any fees relating to services which they have taken up. This should include:

- *the amount or method of calculation of the fee,*
- *the identity of the person to whom the fee is or will be payable,*
- *a description of the services or goods to which the fee relates as well as explaining the worker's right to cancel or withdraw from the service and the length or notice period required, and*
- *the circumstances, if any, in which refunds or rebates are payable to the worker, the scale of such refunds or rebates, and if no refunds or rebates are payable, a statement to that effect.*

2.20 Licensing Standard 7.1 (which is a Critical standard) also concerns fees and service. We propose to consolidate all matters relating to fees and services by moving the above wording from standard 7.3 to standard 7.1.

Question for consultation

- 10. Do you agree with moving the wording in standard 7.3 that relates to fees and service into standard 7.1?**

3. Other Issues for Discussion

- 3.1 This section considers further possible changes to the standards. Some of these changes have been suggested by stakeholders. The GLA has not reached a firm conclusion on these issues. We would welcome views on these issues. You are also invited to identify other areas in the standards which you think should be amended, removed, included or clarified. If you would like to make any further suggestions, please explain why you think such a change is necessary.

Agency Worker Regulations

- 3.2 The Agency Worker Regulations 2010 come into force on 1 October 2011. Some rights should be provided from day 1, namely access to facilities and information on the hirer's job vacancies. Responsibility for these entitlements resides with the hirer, therefore, it would not be a matter for the Licensing Standards. However, the legislation entitles agency workers to the same basic employment and working conditions as if they had been recruited directly after a 12 week qualifying period in the same job.
- 3.3 We would welcome views on whether the Licensing Standards should take account of these regulations. Options include:

Do nothing

- 3.4 Agency workers are entitled to bring an Employment Tribunal claim if they are denied equal treatment. Given this possible remedy, it could be argued that the GLA should not have a role in enforcing equal treatment rights for agency workers and, therefore, the Licensing Standards should not cover the Agency Worker Regulations. Furthermore, should the Standards include reference to the Regulations, action by the GLA could influence any Tribunal proceedings.

Include a new standard focussed on the regulations

- 3.5 This standard could stipulate that:
- Equal treatment is provided to workers after the 12 week qualifying period,
 - Licence holders must not take avoidance measures to get around the regulations,
 - Licence holders provide workers with requested information relating to equal treatment (after the 12 weeks have elapsed and within 28 days)
- 3.6 Including such a focussed Standard would allow greater clarity on matters relating to equal treatment. Any such Standard would not be failed if the licence holder if they can demonstrate that they took reasonable steps to obtain relevant information from the hirer and treated the agency worker accordingly.
- 3.7 If this Standard was introduced, views are welcome on whether it should be classified as a Critical standard (with a score of 30 points) or non-Critical (with a score of 8 points).

Amend existing standards

- 3.8 The individual standards relevant to equal treatment terms and conditions could be amended to reflect the new rights and to clarify what the licence holder must do to comply with the Agency Worker Regulations. The standards that may need amending include:
- Minimum Wage (Standard 2.2). This could be amended to stipulate that agency workers also receive equal treatment for pay after 12 weeks.
 - Wages and Benefits (Standard 2.3). This could be amended to make clear that agency workers are entitled to equal treatment for receive for annual leave and holiday pay.
 - Rest Breaks and Working Hours (Standards 5.1 and 5.2). These could be amended to make sure agency workers receive equal treatment for working time, night work, rest periods and rest breaks.
- 3.9 If the Standards were amended in this way, they would not be failed if the licence holder if they can demonstrate that they took reasonable steps to obtain relevant information from the hirer and treated the agency worker accordingly.

Questions for consultation

- 11. Do you think the Licensing Standards should cover the Agency Workers Regulations?**
- 12. If you consider that the Standards should cover the Agency Workers Regulations, do you think there should be a specific individual Standard or that existing Standards should be amended?**

Changes to the Pensions System

- 3.10 From 2012, changes to pensions law will affect all employers with at least one worker in the UK. In summary, the changes mean employers will need to:
- Automatically enrol certain workers into a pension scheme,
 - Make contributions on their workers' behalf,
 - Register with The Pensions Regulator, and
 - Provide workers with certain information about the changes and how they will affect them.
- 3.11 The new employer duties will be introduced in stages over 4 years, starting in 2012.

- 3.12 We would welcome views on whether the Standards should include requirements relating to these new requirements. Including requirements would help ensure workers do not miss out on saving for a pension. However, many small firms, and therefore GLA licence holders, are unlikely to have an early staging date.

Question for consultation

- 13. Do you think the Standards should include requirements relating to the changes in pensions law?**

Removing or Re-Categorising Licensing Standards

- 3.13 We are interested to receive proposals on whether there are grounds to remove any standards. The GLA is primarily interested in protecting workers, reducing exchequer fraud and levelling the playing field for legitimate businesses. Consultees are invited to make recommendations for removing standards with the objective of better focussing the GLA's inspections on safeguarding vulnerable workers rights.
- 3.14 We would also welcome views on whether any non-Critical standards should be reclassified as Critical (and vice versa – whether any Critical standards should be designated as non-Critical).

Question for consultation

- 14. Do you think there are any standards which could be removed in order to better focus the GLA's work?**
- 15. Do you think any of scores associated with the standard should be reclassified?**

Minimum Wage and Withholding Wages

- 3.15 Licensing Standard 2.2 is a Critical standard which requires:
- *A worker must be paid at least the National Minimum Wage (NMW) or, if applicable, in accordance with the appropriate Agricultural Wages Order (AWO)*
 - *Sufficient records must be kept to prove payment of NMW or in accordance with the appropriate AWO*
- 3.16 Licensing Standard 3.3 is also a Critical standard which requires:
- A licence holder must not withhold or threaten to withhold the whole or part of any payment due to a worker in respect of any work they have done on the basis that:*
- *the licence holder has not received payment from the labour user,*

- *the worker has failed to prove that they have worked during a particular period of time (but this does not prevent the licence holder from satisfying itself by other means that the worker worked for the particular period in question),*
- *the worker has not worked during any period other than that to which the payment relates, or*
- *any matter within the control of the licence holder*

3.17 At present, non-compliances with standards 2.2 and 3.3 will normally lead to the standards being failed and the licence revoked. We would welcome views on whether the GLA should adopt an alternative approach for dealing with breaches of standard 2.2 and 3.3 by adding a condition to the licence requiring the licence holder to pay amounts owed to the workers within a specified timescale. Failure to comply with any such condition would then lead the licence being revoked. Such an approach could benefit workers more directly as it will give them the opportunity to recover unpaid wages whilst ensuring ongoing employment.

3.18 The standards would still be classed as “Critical” and have a score of 30 points. The score of 30 points would therefore contribute to the overall licensing standards compliance score. This alternative approach would only apply if there were no other issues with the licence. Any other non-compliances would mean the overall compliance score will exceed 30 points and therefore revoking the licence is likely to be appropriate.

Question for consultation

16. Do you think there are any standards which could be removed in order to better focus the GLA’s work?

Expiry of Licences

3.19 Licensing Standard 1.4 makes clear that a licence will expire if a licence holder’s registered company number, Unique Tax Reference or VAT number change. This is set out in rule 5 of the Gangmasters (Licensing Conditions) Rules 2009. The principle behind this rule is that licences are granted to an individual legal entity. Generally, a change to a Companies House number, Unique Tax Reference or VAT number indicates that the legal entity no longer exists and, therefore, the licence should no longer be in force.

3.20 We would welcome views on whether you considers the circumstances in which a licence expires, as set out in rule 5 of the Gangmasters (Licensing Conditions) Rules 2009, as still appropriate.

Questions for consultation

17. Do you think there should be any change to rule 5 of the

DRAFT

4. Consultation Questions

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.

[TO BE COMPLETED]

DRAFT

How to Respond

- 4.1 The consultation period began on **[INSERT]** and will run until **[INSERT]**. Please ensure that your response reaches us by that date. Further copies of this document can be found at www.gla.gov.uk. Please send consultation responses to:

David Nix
Head of Licensing
Gangmasters Licensing Authority, PO Box 8538, Nottingham, NG8 9AF
Telephone: 0115 900 8964
Fax: 0115 900 8943
Email: consultation@gla.gsi.gov.uk

- 4.2 A list of those being consulted is available on the GLA website (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.
- 4.3 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.
- 4.4 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.
- 4.5 A summary of responses will be published following the end of the consultation exercise on www.gla.defra.gov.uk.

Annex A – GLA Licensing Standards, issued April 2009

[TO BE INSERTED]

DRAFT

Annex B – Impact Assessment

Summary: Intervention and Options

Contact for enquiries: David Nix, consultation@gla.gsi.gov.uk, 0845 602 5020

What is the problem under consideration?

This consultation reviews the GLA licensing standards.

What are the policy objectives and intended effects?

To assess whether the GLA licensing standards are effective in meeting the Authority's mission statement to reduce the exploitation of workers while ensuring labour providers operate within the law.

What policy options have been considered?

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?

The licensing standards will be next reviewed in 3 years or sooner if necessary.

Consultation stage sign-off

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



Paul Whitehouse, GLA Chairman

Summary: Analysis and Evidence

Costs

As the GLA licensing standards draw together existing legislative requirements, it is anticipated complying with any new or amended standards will not impose any new costs for licence holders beyond what is generated under other legislation.

Licence holders and new applicants may incur costs through familiarising themselves with the revised standards and associated guidance. However, these costs are not anticipated to be significant.

Benefits

Benefits for business may be realised through the standards being easier to understand.

Key assumptions

The GLA has [INSERT NUMBER] licence holders (as of [INSERT DATE]).

Direct Impact on Business

It is estimated there will be negligible new administrative burdens associated with any new or amended licensing standards.

Evidence Base

Please see pages X – XX in this consultation document.

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

Annex D – Consultation Criteria

The 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

If you consider that this consultation does not comply with the Code of Practice, please write to:

Complaints
Gangmasters Licensing Authority
PO Box 8538
Nottingham
NG8 9AF

DRAFT