

# GLA 29/8.2

## Licensing Standards Review

13 April 2011

## **BOARD PAPER REFERENCE – GLA 29/8.2 – Review of the Licensing Standards**

### Issue

1. To inform the Board of the approach and timetable for reviewing the GLA Licensing Standards.

### Recommendation

2. The Board is invited to:
  - Note the issues to be considered and timetable.
  - Provide initial comments (pre-consultation) on the current GLA licensing standards by **11 May 2011**.

### Background

3. The GLA licensing standards set out the conditions that must be complied with to qualify for and retain a licence. They were first issued in March 2006, reissued in October 2006 following the extension of licensing to shellfish gathering and then comprehensively revised in April 2009.

### Purpose of the review

4. The review will:
  - Consider whether the standards are operating effectively;
  - Assess if the standards are applied consistently and proportionately;
  - Take account of relevant changes in the law (e.g. the Equality Act 2010).

### Issues to be considered

5. In addition to assessing the effectiveness of each standard, specific issues to be considered include:

### **Fit and Proper**

6. The April 2009 version significantly revised the definition of "fit and proper" and introduced a policy of automatically refusing applications for two year for those found to be not fit and proper or gangmasters who had been refused and / or revoked twice in a two year period. Can the definition of "fit and proper" be improved?
7. Is the two year rule still appropriate?

### Agency Worker Regulations

8. How should the Agency Worker Regulations be reflected in the Standards? BIS has prepared a short note on the regulations with suggestions on the possible role for the GLA (see annex A).

### Scoring of Standards

9. Standards are scored according to their seriousness. There are Critical standards worth 30 points and non-Critical standards worth 8 points. Applicants and licence holder must score less than 30 points in order to be granted and to retain a licence.
10. Should there be any revisions to the scoring system?

### Timetable

11. The table below sets out the timetable for the review:

Action	Date
Board to submit initial comments	By 11 May 2011
Draft consultation presented to the June Board meeting for approval	13 July 2011
Board to submit comments on consultation document	By 27 July 2011
Public Consultation	8 August – 31 October 2011
Revised licensing standards presented to January 2012 Board meeting for discussion and approval	January 2012 (exact date to be confirmed)
Revised licensing standards introduced	6 April 2012 (in line with common commencement)

### Recommendation

12. To assist with drafting the consultation document, the Board invited to provide initial comments on the operation and effectiveness of the licensing standards by **11 May 2011**, covering the issues identified above or any other points Board members wish to raise.

## **Annex A**

### **Agency Workers Regulations 2010 – BIS Note**

#### **Current position**

1. Regulations are due to come into force on 1 October 2011 - BIS has published the draft guidance and has asked for views by 15 April<sup>1</sup>. It is hoped to finalise the guidance by end of April or soon after. It will appear on the business.link website. It is important that agency workers themselves understand their rights. To this end specific guidance is being produced for agency workers which will be available on the direct.gov website

#### **Summary of entitlements and roles**

2. Certain entitlements for agency workers are the responsibility of the hirer - Day 1 entitlements such as access to canteens or car-parks - other entitlements which start after an agency worker has been in the same job for 12 weeks are the responsibility of the hirer, agency and other bodies involved in the supply of agency workers eg umbrella companies, master or neutral vendors

3. In the event that an agency worker is deprived or denied their entitlements they will be able to bring an Employment Tribunal claim. Before this happens there will be an opportunity for an agency worker to seek information about their entitlements (informally and formally) and for the agency and hirer to try and resolve the matter before a claim is made. Acas can also get involved in pre and post claim conciliation

4. Agencies (and gangmasters) clearly have a central role as they will normally have the direct contractual relationship with the agency worker. The agency will be initially responsible for any breach but will have a defence if they can show they took reasonable steps to obtain relevant information from the hirer and treated the agency worker accordingly. The hirer will therefore be responsible for any breach to the extent that they are responsible eg if failed to pass on information or passed on incorrect information. Anyone in the supply chain could be involved in any claim. It is therefore important that information is passed between parties in a timely manner.

5. The agency worker does not have a legal duty to pass on information. However, if they bring a claim and have not told the agency or hirer or other parties in the supply chain, for example, that they worked for the hirer before (and were therefore entitled to equal treatment before the 12 weeks elapsed on the current assignment) a tribunal can take this into account when deciding the level of compensation in any claim.

#### **Possible role of GLA inspectors**

6. GLA inspectors can play a key role in raising awareness of the regulations and guidance and sources of advice such as Acas. Agencies also have a key role in making sure the agency workers understand the extent of their rights (for example, it does not mean they become permanent employees of the hirer or are automatically entitled to rights outside the Agency Workers Regulations) and that hirers understand what information they need to pass to agencies and when. This is in part because agencies will be responsible for any breach but also because most of them want to provide a good service to their agency workers and to their clients.

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<sup>1</sup> <http://www.bis.gov.uk/policies/employment-matters/strategies/awd>

7. However, we do not see a clear or easy role for inspectors in establishing whether an agency is or is not complying with the regulations. They are wide-ranging and it would be a challenge for inspectors to fully understand the full extent of the regulations and guidance. There is also a real risk that where a GLA inspector made, for example, an incorrect assessment of whether pay received by an agency worker was compliant with equal treatment rights this could adversely affect the Tribunal proceedings. In particular where the evidence is based on what was said by an inspector to an agency worker, the agency and the hirer at the relevant time.

8. Ascertaining whether or not there has been a breach of the Regulations is unlikely to be a simple matter of determining whether or not certain facts exist. Even where there is a clearly a breach it will require determination of the extent of responsibility for the breach – agency, agency worker, hirer, other parties in the supply of the agency worker. In some cases responsibility will be shared between parties but that will be determined by the Tribunal.

## **Employment Relations**

**BIS**

**April 2011**