

# GLA 21/6.1

## Licensing Standards Review

14 January 2009

## **BOARD PAPER REFERENCE – GLA 21/6.1 – Licensing Standards Review**

### Issue

1. To discuss and agree the new version of the GLA Licensing Standards to be implemented from 6 April 2009.

### Recommendation

2. The Board is invited to approve the revised standards at annex A.

### Background

3. A consultation reviewing the GLA Licensing Standards closed on 24 October 2008. A summary of responses is at annex B. These responses informed the revised version at annex A. This paper explains the significant changes. Minor text and reference changes which do not affect the substance of the standard are not discussed here.

### **Categories, scoring and ALCs**

4. At present there are four types of licensing standard category with associated points: Critical (30 points); Major (8 points); Reportable (4 points); Correctable (2 points). Only Critical and Major non-compliances count towards an inspection score.
5. The new version has simply "Standards", with some designated as "Critical". The scoring for the Critical will remain at 30 points. The other standards will be 8 points (the same as the current Major standards), except for the new standard 1.4 which is has 16 points associated with it. The fail score for an inspection will remain at 30 points. The current process of attaching Additional Conditions to a licence will continue
6. Standards previously categorised as Reportable and Correctable have been upgraded or removed – these changes are explained in detail below.

### **Fit and Proper Test**

7. The definition of fit and proper has been enhanced and is now much clearer on the circumstances we may apply to fail a business for not being fit and proper.
8. A competency test for the principal authority is now included – this has been specifically included to tackle those who put forward a front person who has no real control over the business.
9. This new definition of fit and proper includes circumstances where the GLA will automatically refuse applications:

- Once an applicant is found to be not fit and proper against standards 1.1 and 1.2 we will automatically refuse to grant a licence for two years from the date of the fit and proper decision.
  - Once an applicant is found to have been connected to someone who has been deemed to be not fit and proper against standards 1.1 and 1.2 we will automatically refuse to grant a licence for two years from the date of the fit and proper decision.
  - Where an applicant an applicant has been refused or revoked twice previously on breach of any standards other than fit and proper (1.1 and 1.2), we will automatically refuse to grant a licence for two years from the date of the second decision.
  - Where an applicant is found to have been connected to someone who has been refused or revoked twice previously on breach of any standards other than fit and proper (1.1 and 1.2), we will automatically refuse to grant a licence for two years from the date of the second decision.
10. These automatic refusals will not affect a person's right of appeal.

### **Correcting ALCs and Notifying Changes of Details**

11. To emphasise the importance of clearing ALCs within the prescribed time period, a new Critical standard has been introduced. This includes new businesses being required to notify the GLA when they start trading – this will help determine whether a further inspection is required (new licensing standard 1.3).
12. There is also a slight change to how we will consider licence holders who do not notify us of changes in details (new licensing standard 1.4). As this non-compliance will be immediately resolved when it comes to light, a different approach to attaching an additional condition to the licence is required. In future, non-compliance with this will contribute 16 points to a licensing standard compliance score. These 16 points will remain on the licence for a 12 month period and will count towards any subsequent inspection score. This is analogous to points on a driving licence.

### **PAYE, NI and VAT**

13. At present, complying with PAYE, National Insurance and VAT is covered across three separate standards. The PAYE and NI standards are currently classed as Major with VAT Reportable.
14. There is a single proposed new standard combining all three issues, with the score upgraded to Critical. Combining the old standards reflects the synergy between the three areas. Upgrading to Critical is a response to the seriousness of tax evasion and exchequer fraud.

**National Minimum Wage and the Accommodation Offset**

15. The proposed standard seeks to proportionately take account of breaches of the accommodation offset. For breaches where rent charged is between the level of the accommodation offset and the appropriate Local Housing Allowance (LHA), we will class the failure as a non-critical non-compliance and will contribute 8 points to a licensing standard compliance score.
16. The GLA will not expect this non-compliance to be resolved within a set deadline (in the same way as other conditions which may be attached to a licence). These 8 points will remain on the licence for a 12 month period and will count towards any subsequent inspection score. Where rent is charged above the LHA, we will class the failure as a critical non-compliance. This only applies for situations where there is no element of on-call work. Failure to pay correct levels for workers who work on-call will result in a critical non-compliance.

**Forced Labour**

17. Current standard 2.7 (which deals with withholding wages) has been moved to section 3 and now sits alongside the standards which relate to forced labour. It has also been upgraded to Critical to reflect the seriousness of withholding wages from workers. This brings the GLA's Standards into line with the Council of Europe Convention on Action against Trafficking in Human Beings (which the UK ratified on 17 December 2008 and will be in force on 1 April 2009).

**Accommodation**

18. Current standard 4.3 has been split to form 4.1 and 4.2 to make clearer what is expected of labour providers who provide, or effectively provide, accommodation.

**Health and Safety**

19. Health and safety standards have been simplified to make clearer who is responsible for assessing and controlling risks. A new critical standard has been introduced relating to a significant threat of serious injury.
20. A single transport standard (classed as Critical) is proposed. This new standard should better reflect the importance of safe and adequately insured transport.

**Standards Relating to Shellfish Gathering**

21. The emphasis with standards relating to shellfish gathering has been shifted to reflect the responsibilities of the gangmaster and the supervision of the workers. Standards which were purely focussed on the behaviour of the workers (which may be outside the control of the gangmaster) have been removed. The onus is now placed firmly on the gangmaster adequately controlling and looking after the workers. This change should make the shellfish standards fairer.

## Recruitment and Contractual Arrangements

22. The most significant change is to increase work finding fees to a Critical (see new standard 7.1). Further changes have also been made to reflect the Conduct of Employment Agencies and Employment Businesses Regulations.

## Removed Standards

23. The following standards have been removed entirely:

<b>Current Standard (with reference and category)</b>	<b>Reason for removal</b>
Requiring licence holders to provide their licence number and other details to their workers and labour users (1.3; Correctable)	Considered unnecessary as a standard in itself. Anyone using a labour provider should check the public register to make sure they are licensed (the "Reasonable Steps" to establish a statutory defence).
Evidence that the licence holder has an accurate payroll system in place whether in paper or electronic form (2.4; Correctable)	This is not needed. What matters is that the pay and payslips are accurate – this is covered by new standards 2.2 and 2.4.
Scotland only standard for wage deductions for agricultural workers (2.6; Major)	This is sufficiently covered in new standard 7.3. Plus there has never been a failure against this standard – old standard 2.5 sufficiently covered wage deductions so the standard has always been superfluous.
Data and records are kept securely (3.10; Correctable)	Not considered necessary. Confidentiality and data protection matters will be dealt with under new LS 5.5.
Continuing paying workers after introducing them for permanent work with a labour user (7.5; Correctable)	Not considered necessary – this standard does not present any detriment to the worker.
Evidence of agreement between licence holders and sub-contractors (8.3; Correctable)	Not considered necessary as covered by 7.4. The key issue is whether the sub-contractor is licensed.
Securing the worker's permission before transferring them to another licence holder (8.4; Correctable)	Not needed. New standard 3.2 stipulates work must be freely chosen.
Details of any work activities carried out by children and young children are on file (9.2; Major)	Record keeping covered under 7.3.
Copies or risk assessments available where young persons are employed (9.3; Reportable)	Not needed. Risk assessment under new standard 6.1 will be sufficient.
Children and/or young persons are only carrying out work permitted by	If any serious abuse of underage working laws is ever identified, this

law (9.4; Major)	can be tackled through the new fit and proper test.
No evidence of student workers working in excess of 20 hours per week during term time (10.2; Reportable)	New standard 7.2 should sufficiently deal with entitlement to work in the UK. This level of detail is not considered necessary.

### Revoking With Immediate Effect

24. The new version of the standards now makes clear when the GLA will revoke a licence with or without immediate effect. The standards classed as Critical now state which type of revocation may be applied. There is a clear process for deciding whether to revoke with immediate effect. Firstly, the GLA Head of Licensing will assess the inspection report to determine the licence decision. If there are any failures against Critical Standards designated as potential licence revocations with immediate effect, the GLA Head of Licensing will escalate the matter to the GLA Executive Management Board who will then review the case and decide whether any licence revocation should be with immediate effect.
25. The table below summaries the Critical standards and associated type of revocation. If a licence holder accumulates an inspection score above 30 points without failing any of the Critical standards which result in a revocation with immediate effect, the licence will be revoked without immediate effect.

Critical Standard	Type of revocation
Fit and proper (1.1)	May be with immediate effort. Failure against this standard demonstrates the licence holder is manifestly unfit to hold a licence.
Principal Authority competence test (1.2)	Where this standard is failed for licence holders with a new Principal Authority, the licence may be revoked with immediate effect. Failure against this standard will demonstrate the Principal Authority's inability to act in a fit and proper manner.
Correcting ALCs (1.3)	Without immediate effect.
PAYE, NI and VAT (2.1)	Without immediate effect.
Paying minimum wage (2.2)	Without immediate effect.
Physical and Mental Mistreatment (3.1)	May be with immediate effect. This directly relates to the health, safety and welfare of the workers.
Debt bondage and retaining ID documents (3.2)	May be with immediate effect. This standard covers the key ILO indicators of forced labour.
Withholding wages (3.3)	May be with immediate effect. Again, this is a serious example of forced labour.

Quality of Accommodation (4.1)	May be with immediate effect. This directly relates to the health, safety and welfare of the workers.
Licensing of Accommodation (4.2)	Without immediate effect.
Transport (6.5)	May be with immediate effect. This directly relates to the health, safety and welfare of the workers.
Using workers to gather shellfish (6.6)	May be with immediate effect. This directly relates to the health, safety and welfare of the workers.
Shellfish gathering – Getting to the Work Area (6.7)	May be with immediate effect. This directly relates to the health, safety and welfare of the workers.
Lif jackets and Liferrafts (6.8)	May be with immediate effect. This directly relates to the health, safety and welfare of the workers.
Use of Boats (6.9)	May be with immediate effect. As uncertified boats would be impounded by the Maritime and Coastguard Agency, it is appropriate to revoke with immediate effect.
Shellfish gathering permits and licences (6.10)	May be with immediate effect. Without the required fishery permits, the workers should not be in the work area.
Job Finding Fees and Providing Services (7.1)	Without immediate effect.
Using Sub-Contractors (8.1)	May be with immediate effect. Treated seriously as this is a criminal offence.

### Transition Strategy

26. As soon as the new Standards are agreed by the Board, all applicants and licence holders will be notified of the changes and the new Standards publicised. Any inspection after 6 April 2009 will be conducted against the new Standards.
27. Licence holders with ALCs affected by the change in standards will be instructed to clear the ALC according to the current system. If the ALC has not been rectified by the clearance deadline, any relevant new standard will apply.