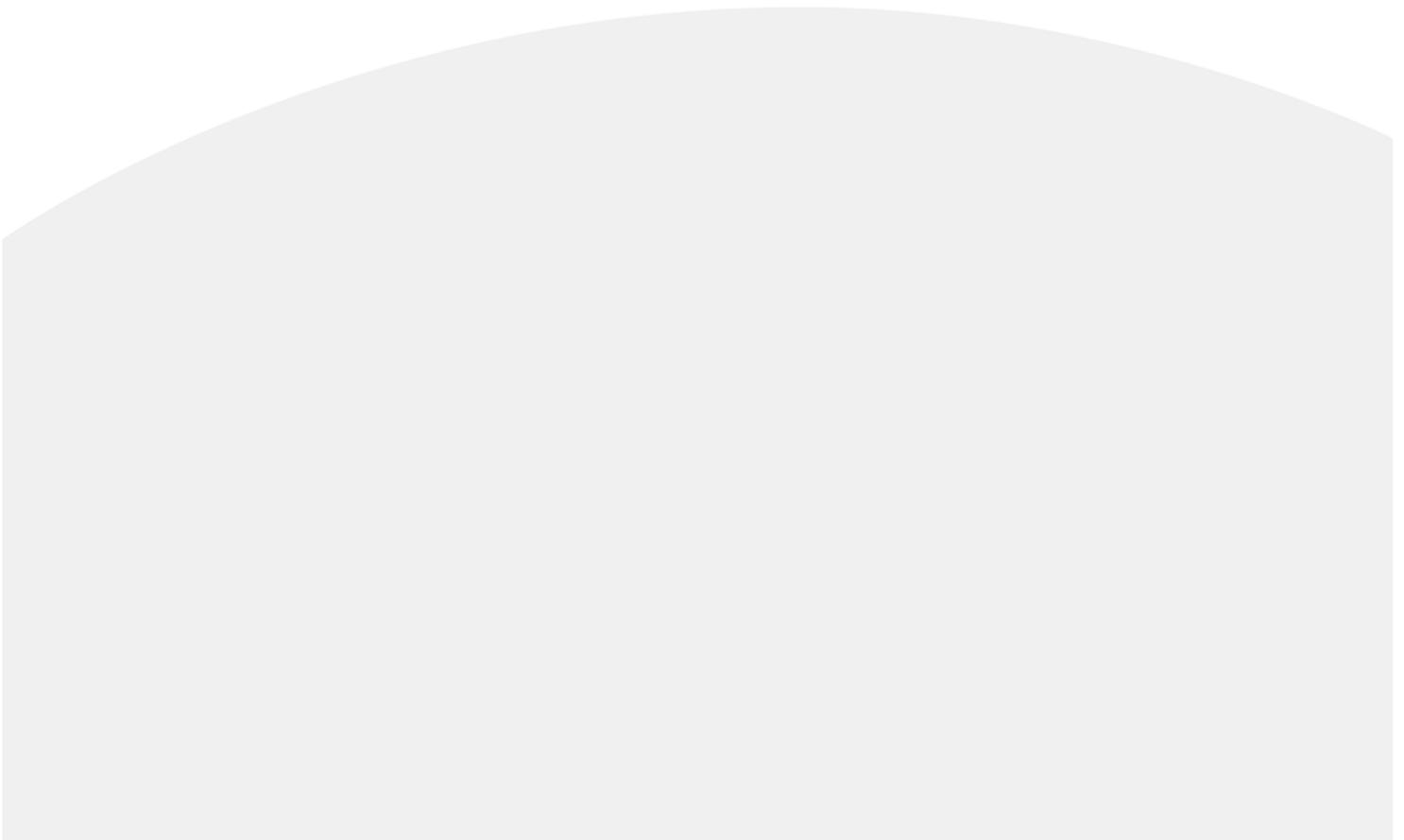




GLA Licensing Standards Consultation

Summary of Responses



Introduction

The Gangmasters Licensing Authority (GLA) published a consultation document on 4 August 2008 seeking views possible changes to the GLA licensing standards. The consultation closed on 24 October 2008. This is a summary of the responses received.

A list of the respondees is at annex A.

Summary of Responses

1. Do you agree that the GLA should adopt a "two strikes and you are out" policy?

Unite consider labour providers that have had their licences revoked should be permanently excluded from providing labour again in the future.

The Best Connection, UKBA, HOPS Labour Solutions, Marton Recruitment Ltd and Riverside Recruitment Ltd agree this approach should be implemented.

The ALP do not agree. They consider one strike should be sufficient but this depends on the GLA refusing or revoking licences only on grounds where there is systematic failure to comply with licensing standard that are focussed on exploitation of workers and tax evasion.

The NFU consider this approach would be disproportionate.

BSHF consider any such move would need to prevent 'phoenix' operations.

REC consider that in the most serious cases the GLA should not wait for this approach.

2. Should such a restriction be indefinite or lapse after a set period of time?

Marton Recruitment Ltd and Riverside Recruitment Ltd believe the restriction should be indefinite.

The NFU, UKBA and HOPS Labour Solutions consider the restriction should lapse after a set period of time.

3. Do you agree with the list of "significant" changes?

The ALP, REC, UKBA, Unite, BSHF, HOPS Labour Solutions, Riverside Recruitment Ltd, Concordia Group Ltd and Marton Recruitment Ltd agree with the list. REC also consider licence holders should notify the GLA if they go into liquidation, administration or make an arrangement with their creditors or if any of the individuals named on the licence are adjudicated bankrupt.

UKBA also suggest licence holders should be required to report any relevant criminal convictions or if they cease trading.

The NFU consider the list should include change of company name and trading name.

The Best Connection do not agree and comment that they do not understand why individuals need to be named on a licence.

4. Views are welcome on what an appropriate penalty for not informing the GLA of changes should be?

Marton Recruitment Ltd considers licence revocation would be an appropriate penalty for deliberately withholding information, particularly if it was done to gain a commercial advantage. Riverside Recruitment Ltd consider a financial penalty, revocation or points could be used if a business deliberately did not notify the GLA. They also consider that if it was an oversight, then perhaps points should be added to the licence.

The NFU consider revocation or a financial penalty would be appropriate.

The ALP consider there should be no penalty except in the case of systematic deliberate failure to notify, in which case the "fit and proper" provisions are adequate.

HOPS Labour Solutions consider there should be a financial penalty first with licence revocation for persistent offenders.

UKBA support the use of a financial penalty

BSHF support a range of sanctions.

REC considers that if there were serious attempts to deceive the GLA, this should be dealt with through the fit and proper test.

The Best Connection supports a financial penalty.

5. Do you agree with the proposed standards relating to forced labour?

The ALP, REC, HOPS Labour Solutions, Unite, UKBA, the Best Connection, Marton Recruitment Ltd and Riverside Recruitment Ltd agree with the proposed standards.

The NFU agree but consider the standards should be clear that they do not prevent employers requiring workers to submit timesheets and other records.

6. Should current licensing standard 2.7 be upgraded to "critical" to reflect the seriousness of "forced labour"?

Unite, UKBA, HOPS Labour Solutions, BSHF, Marton Recruitment Ltd and Riverside Recruitment Ltd agree this standard should be classed as "Critical". REC also agree but express concern the phrase 'any matter within the control of the gangmaster' is too wide.

The Best Connection accept this should be critical provided the problem is systematic.

The ALP does not consider this is necessary as it is already covered by the critical standard 2.8.

The NFU consider the payment of wages should not be confused with 'forced labour'.

7. Do you agree the GLA should use the BERR interpretation of “effectively providing”?

The NFU, REC, Unite, UKBA, HOPS Labour Solutions, BSHF, LACORS, Shelter, Marton Recruitment Ltd and Riverside Recruitment Ltd agree the BERR interpretation should be used.

The ALP agree with using the BERR interpretation but have reservations with the interpretation itself.

8. Do you agree with the proposed changes to licensing standard 4.3?

The NFU, HOPS Labour Solutions, Unite, Shelter, the Best Connection, Marton Recruitment Ltd, BSHF and Riverside Recruitment Ltd agree with the proposed changes. BSHF also recommend a series of detailed changes.

The ALP suggest standard 4.3 should be confined to a more substantive point and recommend wording of “where workers live in accommodation provided by the labour provider it is safe for its habitants”.

LACORS submitted detailed comments for amending this standard.

REC consider it would be better to signpost the relevant guidance on this matter.

9. Do you agree with the proposed changes to licensing standard 6?

HOPS Labour Solutions, BSHF, Unite, Riverside Recruitment Ltd, the Best Connection, Concordia Group Ltd and Marton Recruitment Ltd agree with the proposed changes.

Unite would also support upgrading standard 6.9.

The ALP consider that standard 6 should include a “critical” standard along the lines of “are workers in significant and immediate risk of serious injury”.

The ALP also consider the proposed standards 6.5 and 6.6 are unworkable.

REC do not support the changes as they consider it not compatible with their interpretation of the law.

10. Do you agree that prohibiting work finding fees should be a separate standard classed as “Critical”?

The ALP, UKBA, the Best Connection, REC, Unite, Riverside Recruitment Ltd, BSHF, Concordia Group Ltd and Marton Recruitment Ltd support the proposed change.

HOPS Labour Solutions agree in principle but note issues with charging workers in overseas countries.

The NFU consider the change is too stringent.

11. Do you agree with the proposed changes to licensing standard 10.1?

The NFU, REC, Unite, HOPS Labour Solutions, Riverside Recruitment Ltd, BSHF, Concordia Group Ltd and Marton Recruitment Ltd agree with the change.

The ALP agree with the change and recommend including a reference to the employer's statutory defence.

UKBA recommend including a reference to relevant legislation. UKBA also recommend that standard 3.7 be amended to provide for all appropriate illegal working checking.

The Best Connection disagree and consider the GLA should only report suspected cases of illegal working to the suspected authorities.

12. Do you think the GLA should continue to use four categories of licensing standard?

Marton Recruitment Ltd consider the current approach highlights best practice for the industry. Riverside Recruitment Ltd, UKBA and the NFU support continuing to use four categories.

The ALP argue "correctable" and "reportable" standards should be removed.

13. Views are welcome on the scores attributed to the different categories of standard. Do you think the fail score for an inspection should remain at 30 points?

Marton Recruitment Ltd and Riverside Recruitment Ltd support keeping the fail score at 30 points.

The ALP consider 30 points should be a trigger at which revocation should be considered, with 40 points an absolute figure at which revocation should occur.

14. If the licensing standards retain four categories of standard, do you think "reportable" and correctable" standards should contribute to an inspection score?

Marton Recruitment Ltd and Riverside Recruitment Ltd consider all categories should count towards an inspection score.

The ALP favour removing these categories but if they remain then they should not contribute to an inspection score. The NFU also consider that the categories should not contribute to an inspection score.

Shelter consider both reportable and correctable non-compliances should count in the inspection score.

The Best Connection consider the GLA should focus on Major and Critical issues.

15. Should any changes be made to the scoring of individual standards?

Marton Recruitment Ltd and Riverside Recruitment Ltd are content with the current approach.

The Best Connection consider the scoring system should take account if the degree of non-compliance.

The ALP consider systematic non-payment of tax and National Insurance should be a critical non-compliance.

Shelter recommend altering the scoring system so that major non-compliances score 15 points each. Shelter also recommend that licensing standard be preserved as a "critical" standard. They also support licensing standard 4 warranting an automatic revocation of a licence where there is evidence of poor or overcrowded housing conditions or a failure to conform with local housing regulations on HMOs.

The NFU consider minor errors of NMW or AWO should receive a lower score.

REC suggest standard 2.3 could be reviewed given the serious nature of tax evasion.

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

Marton Recruitment Ltd and Riverside Recruitment Ltd do not think any standards should be removed.

The Best Connection consider the standards must be clear so that no other guidance is required and that there should be no requirement to comply with anything other than the law. The Best Connection also make a series of detailed points at how the standards could be improved.

The ALP recommend a number of standards which could be removed as they are not central to the GLA's objectives.

The NFU consider standard 4.3 should be removed on the grounds the GLA should not confuse its role with that of the Local Housing Authorities.

REC suggest standard 2.4 should not concern the GLA. They also consider 5.2 is unclear. They recommend 9.1 be changed to reflect 10.1.

Unite oppose removing any standards.

17. Views are welcomed on whether the standards should include requirements specifically relating to the supply of self-employed workers.

The ALP consider standards relating to the supply of self-employed workers by labour providers are not required but should be considered for service providers.

The NFU and the Best Connection consider the standards should not include such a requirement.

REC does not believe it is necessary to have separate requirements relating to the supply of self-employed workers as this should be an exceptional circumstance.

Unite would support moves by the GLA to pursue requirements around the supply of self-employed workers.

UKBA consider standards relating to the supply and status of self-employed workers would assist in tackling tax abuse and illegal working.

18. Do you think the standards should be amended to reflect the work of payroll and managed service companies?

Riverside Recruitment Ltd and the Best Connection do not support any changes.

The ALP does not support any changes. They argue that if these businesses supply workers then they should be regulated and subject to the licensing standards.

REC note this is a complex area and offer further help to the GLA.

19. Do you think the licensing standards should include a requirement for labour providers based outside the UK to comply with the relevant legislation of their home country?

HOPS Labour Solutions, Unite, Marton Recruitment Ltd and Riverside Recruitment Ltd support introducing such a standard.

UKBA support the change but note practical implications of enforcement in different countries.

The ALP and REC consider such a standard as impractical and argue the GLA should concentrate on preventing such labour providers charging a fee to workers.

The NFU and the Best Connection do not support the proposal.

20. If the standards included a specific condition, what category of standard should it be classed as?

Marton Recruitment Ltd consider any such standard should be classed as "Major". Riverside Recruitment Ltd consider it would depend on the standard.

HOPS Labour Solutions consider this standard should be "critical".

21. Do you agree the interpretation of who needs a GLA licence for shellfish gathering is sufficiently clear?

Unite, Morecambe and Heysham Fisherman's Association and Riverside Recruitment Ltd agree that the interpretation is clear. Unite would also support more research into the sector.

The Shellfish Association of Great Britain consider the interpretation is not sufficiently clear and argues businesses who employ workers should be excluded from licensing.

The Sea Fish Food Legislation Expert Group consider the current interpretation of who needs a licence is too broad.

22. Do you agree that the 12 licensing standards relating to shellfish gathering should remain as "critical"?

Morecambe and Heysham Fisherman's Association, the Best Connection and Riverside Recruitment Ltd agree the standards for shellfish gathering should remain critical.

The Sea Fish Food Legislation Expert Group believes some flexibility should be allowed in the interpretation of shellfish only standards.

The Health and Safety Executive is keen for the scoring system to maintain an effective balance between achieving the required standards in practice, encouraging those engaged in the activity to stay within the licensing regime and recognising the difficult conditions that can affect licence holders.

23. Should the standards be changed to better reflect the HSE requirement for the forestry industry?

The Forestry Commission consider the wording of standard 6.5 adequately covers the first level of site planning and site risk assessment in forestry. They also consider the proposed wording for standard 6.6 is an improvement. However, they state the wording does not fit circumstances where a planting contractor might sub-contract to self-employed workers. They comment that in this situation it is the self-employed person who must ensure they are provided with suitable personal protective equipment.

The ALP, Unite and Riverside Recruitment Ltd support the change.

The Best Connection does not support the change.

The Health and Safety Executive welcomes any harmonisation of standards.

24. Do you agree with the proposal to introduce a separate standard specifically relating to agricultural minimum wage overtime payments (with an associated score of "major")?

Unite have expressed concern at downgrading the payment of overtime.

Marton Recruitment Ltd do not support this change as they consider the overtime rate as important. The Best Connection do not support the change.

HOPS Labour Solutions and Riverside Recruitment Ltd supports the proposal.

The ALP consider the proposal does not go far enough and argue reference to the AWO should be removed from the licensing standards.

The NFU consider payment of AWO overtime should not be treated as a separate category of non-compliance.

REC express concern at the difference in the NMW and AWO rate. REC support any separate standard should be a Major.

25. Views are welcome on how the standards could take into account issues relating to the accommodation offset.

Unite strongly oppose any change to assessing and dealing with non-compliance with the accommodation offset.

Riverside Recruitment Ltd consider accommodation cannot be provided at the offset level.

The ALP argue the standards should specifically exclude enforcing the NMW rules on paying accommodation as these are nothing to do with the abuse of workers.

Shelter consider there should be no relaxation in assessing compliance with the NMW and the accommodation offset. They also believe that where accommodation is provided, tenancy agreements should be provided.

The NFU and HOPS Labour Solutions do not support any variance in assessing non-compliance with NMW or AWO.

BSHF recommend that the level of the accommodation offset should be increased to the relevant Local Reference Rent where there is no element of on-call work, but recognise this would require legislative changes. They advocate a graded approach: a breach where the rent charged is between the level of the accommodation offset and the Local Reference Rent could be a Major non-compliance, while rent charged above this could remain a Critical non-compliance.

REC consider a separate standard on accommodation charges should be introduced

General comments

The Best Connection comment that the licensing standards should take account of different employment statuses.

Ards Borough Council support the proposed changes.

Stanswood Bay Oystermen Ltd calls for the "bona fide" shellfish industry to be excluded from licensing.

The Environment Agency recommends that where a gangmaster intends to direct workers to gather shellfish from a public fishery they should be required to early contact with the relevant sea fisheries committee, local Port Heath or Environmental Health office and provide their licence details, intended number of workers and target species and length of time they plan to gather.

The Sea Fish Food Legislation Expert Group considers the GLA has not halted illegal labour practices in shellfish gathering and recommends better cooperation with stakeholders to tackle illegal activities.

The Health and Safety Executive recommend some textual changes to improve clarity.

The ALP consider the new wording for standard 5.1 is too vague. The NFU consider standard 5.1 is too confusing.

Unite is concerned to the proposed changes to 5.2. They would like at the very least for there to be some clear enforceable criteria as to how to ascertain whether a worker is "freely choosing not to take a rest break".

Unite would support a mechanism for the GLA to penalise gangmasters for retrospective abuses.

BSHF consider standard 4.2 could include further information on what a reasonable maximum notice period might be. They also suggest reference to the Accommodation Agencies Act 1953.

ALP and REC raise objections to the use of the term 'gangmaster'.

Annex A: List of Respondees

1. Concordia Group Ltd
2. Anonymous x2
3. Malcolm McLarty
4. Morecambe and Heysham Fisherman's Association
5. Marton Recruitment Ltd
6. International Agricultural Exchange Association
7. Shellfish Association of Great Britain
8. Ards Borough Council
9. Stanswood Bay Oystermen Ltd
10. Environment Agency
11. Sea Fish Industry Authority on behalf of the Sea Fish Food Legislation Expert Group
12. Riverside Recruitment Ltd
13. Health and Safety Executive
14. Association of Labour Providers
15. Shelter
16. LACORS
17. HOPS Labour Solutions
18. NFU
19. Building and Social Housing Foundation (BSHF)
20. Forestry Commission
21. Recruitment and Employment Confederation
22. Unite the Union
23. The Best Connection
24. UK Border Agency