



GLA Licensing Standards Consultation

August 2008

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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 while 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 **24 October 2008**. Please note: this consultation does not seek views on the GLA licence fees. A separate consultation will be issued later in the year on the fee levels for the next financial year.

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 standards were issued in March 2006 before the GLA started to accept licence applications in April 2006. They were reissued in October 2006 following the extension of licensing to shellfish gathering. The current licensing standards are at annex A. The standards comprise the Gangmasters (Licensing Conditions) (No.2) Rules 2006 and other relevant legislation.
- 1.6 Each standard is weighted according to its seriousness. There are four categories of standard, each with an associated score. 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: the most serious category of non-compliance (30 points)
 - Major: major non-compliances (8 points)
 - Reportable: less significant non-compliances (4 points)
 - Correctable: minor non-compliances (2 points)
- 1.7 To ensure the GLA compliance regime focussed on the most serious areas, Reportable and Correctable non-compliances have so far not counted towards the applicant and licence holder's licensing standards score.
- 1.8 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 applied for standards designated as "Major". This allows up to three ALCs before the 30 points fail threshold is reached.

- 1.9 As of 22 July 2008, there are 1,186 licence holders. 95 have ALCs. There are significantly less licence holders with ALCs than when were issued in 2006. Annex B details the numbers of non-compliance found so far against each standard.

Next Steps

- 1.10 Subject to responses received, we intend to implement any changes to the licensing standards by April 2009.

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.

Section 1 of the Licensing Standards: Possession of Valid Licences

Definition of Fit and Proper

- 2.2 We require licence holders and individuals named on the licence to be 'fit and proper'. The current definition is:

Persons acting as a "gangmaster" must act in a fit and proper manner. The GLA considers a "fit and proper" person to be any individual or organisation operating in the licensable sectors that complies with the licensing standards. In addition, any individuals or organisations must not have been the subject of relevant convictions for offences connected to the activities covered by the licensing standards, particularly where those offences relate to victimisation, harassment and violence towards workers. These offences may be a bar to receiving a licence. The GLA may also consider other information where this is brought to its attention along with any independent investigation by the GLA which identifies activities that result in the individual or organisation being considered unfit to hold a licence.

- 2.3 We are considering enhancing this definition by including a restriction which prevents anyone being granted a licence if they have been refused or revoked a licence on two previous occasions (either as a business or an individual involved with a refused or revoked gangmaster). Such action would be justified on the grounds the person or business has a history of serious non-compliance.

Questions for consultation

1. **Do you agree that the GLA should adopt a "three strikes and you are out" policy? If you disagree, please give reasons for your answer.**
2. **Should such a restriction be indefinite or lapse after a set period of time?**

Notifying the GLA of Changes in Details

- 2.4 Rule 4(3) of the Gangmasters (Licensing Conditions) (No2) Rules 2006 requires licence holders to notify the GLA "within 20 working days if there are any significant changes to details submitted with his application". We intend to make the licensing standards clearer on what is considered "significant". We propose licence holders must notify the GLA within 20 working days if:

- the principal authority, directors, partners or individuals named on the licence change;

- Companies House number, Unique Tax Reference or VAT number changes;
- Any of the contact details submitted during application change (i.e. address, email or telephone number); and
- Licence holders designated as “new businesses” must notify the GLA once they start to supply workers in the licensed sectors.

Question for consultation

- 3. Do you agree with this list of “significant” changes? If you disagree, please give reasons for your answer.**
- 4. Views are welcome on what an appropriate penalty for not informing the GLA of changes should be? For example, do you agree it would be appropriate to revoke a licence or impose a financial penalty if a business deliberately did not notify the GLA of changes in details?**

Section 3 of the Licensing Standards: Debt Bondage, Harsh Treatment or Intimidation of Workers

- 2.5 This section of the standards correlates broadly to the International Labour Office’s indicators of forced labour. In order to further improve the GLA’s ability to identify and respond to forced labour, we intend to revise this standard to better reflect the ILO’s indicators. Our proposed standards relating to forced labour are:
- Workers are not subjected to physical or mental mistreatment and no threats should be made to the workers. This includes making threats to persons connected to the workers (such as family members) in order to force them to comply (Critical). [This is an expansion of current licensing standard 3.1]
 - There are no restrictions on the worker’s movement: there are no debts between the gangmaster and worker that prevent a person freely seeking other employment. Workers must be free to work elsewhere without incurring (or fear of incurring) any other penalty (Critical) [This is an amalgamation of licensing standards 3.2 and 3.6]
 - Workers are not required to surrender identity papers such as passports, beyond initial illegal working checks, for retention (Critical) [same as current licensing standard 3.6]
 - Wages must not be withheld or threatened to be withheld to any worker on the following grounds:
 - Non-receipt of payment from the labour user

- The worker failing to prove that he has worked during a particular period of time (although the licence holder can satisfy themselves that the worker did carry out the work using other means)
- The worker only having worked during the period to which the payment relates
- Any matter within the control of the gangmaster

[This is currently licensing standard 2.7. We also consider that this should be upgraded to “Critical” as it goes to the heart of our mission statement.]

Question for consultation

- 5. Do you agree with the proposed standards relating to forced labour? If you disagree, please give reasons for your answer.**
- 6. (d) above is currently classed as a “Major” standard. Views are welcome on whether this should be upgraded to “Critical” to reflect seriousness of “forced labour”?**

- 2.6 We intend to retain the other current licensing standards included in section 3 (3.3, 3.4, 3.5, 3.8, 3.9 and 3.10).

Section 4 of the Licensing Standards: Workers’ Accommodation

Effectively Providing

- 2.7 Any licence holder who provides, or effectively provides, accommodation to workers needs to comply with the standards in section 4. We intend to make the licensing standards clearer on what “effectively providing” means. Guidance was issued to licence holders through “Licensing News” in February 2008. This explained that we apply the same interpretation of “effectively providing” as the Department for Business, Enterprise and Regulatory Reform (BERR) does for the national minimum wage and accommodation offset as they are responsible for these matters. Please note, the accommodation offset is considered further at paragraph 3.22.

- 2.8 We propose to use the following interpretation, taken from BERR’s guidance, in the revised standards:

“The gangmaster will be considered as providing accommodation in all the following circumstances whether or not the accommodation is let by the gangmaster or a third party:

- The accommodation is provided in connection with the worker’s contract of employment; or

- A worker's continued employment is dependant upon occupying particular accommodation; or
- A worker's occupation of accommodation is dependant upon remaining in a particular job

Where the provision of accommodation by the gangmaster and the worker's employment are not dependant upon each other, the gangmaster may be considered to be providing accommodation in circumstances where:

- The gangmaster is the worker's landlord either because he owns the property or because he is subletting the property; or
- The gangmaster and the landlord are part of the same group of companies trading in association; or
- The gangmaster's and the landlord's businesses have the same owner, or business partners, directors or shareholders in common; or
- The gangmaster or an owner, business partner, shareholder or director of the gangmaster's business receives a monetary payment and/or some other benefit from the third party acting as landlord to the workers.

Third parties will include:

- Businesses and companies which are separate legal entities to the employer; and
- Individuals including those who are family members of a director, business partner, shareholder, or owner of the gangmaster; and
- Businesses or companies with a director, shareholder, owner or business partner who is a family member of a director, shareholder, owner or business partner of the gangmaster.

This interpretation will apply whenever the gangmaster is providing accommodation regardless of whether the worker can choose whether or not to occupy the accommodation. Even if the accommodation is optional, where the worker chooses to accept the offer, this interpretation will apply."

Question for consultation

- 7. Do you agree the GLA should use the BERR interpretation of "effectively providing"? If you disagree, please give reasons for your answer.**

Quality of Accommodation: Licensing Standard 4.3

2.9 Licensing standard 4.3 currently states:

Where workers live in accommodation provided by the gangmaster, it contains appropriate facilities (e.g. water, power, heating, bedding, sanitation) and is safe for its inhabitants. The GLA will expect to see evidence that any electrical equipment provided for cooking, heating, recreational or similar use is being properly maintained and that tenants have been supplied with copies of the most recent gas safety certificate as required by the current Gas Safety (Installation and Use) Regulations.

[Scotland only: where appropriate, accommodation is licensed or registered in accordance with the Antisocial Behaviour etc (Scotland) Act 2004 (Part 8, registration of landlords) or the Civic Government (Scotland) Act 1982 (Licensing of Houses in Multiple Occupation) Order 2000.]

[England, Wales only: there should be no evidence that the room and space standards set out in the Housing Act 1985 and 2004 and associated secondary legislation are breached nor that there is evidence of misuse of Houses of Multiple Occupancy (HMO).]

- 2.10 We propose to amend this standard to better reflect the requirements of the Gas Safety (Installation and Use) Regulations 1994 by incorporating the following into this standard:

“Where you provide accommodation comprising one or more gas installations, including appliances, fixed or flexible pipework, meters, LPG tanks or cylinders, you should be able to demonstrate that:

- The installation is maintained at least annually by a CORGI registered installer who has the appropriate competencies e.g. the relevant Accredited Certification Scheme (ACS) assessment for that type of appliance or installation.
- The gas appliances and flues are subject to annual safety checks and that the details of the checks have been provided to the workers/ tenants e.g. the landlord gas safety record is displayed within the accommodation.
- If the CORGI registered installer has told you remedial actions are needed to make the installation safe, you should arrange for appropriate remedial action to be taken as soon as possible by a person with the appropriate competencies.

For further information on gas safety standards and legal requirements see www.hse.gov.uk. To find a CORGI registered installer contact www.trustcorgi.com.”

Question for consultation

- 8. Do you agree with the proposed changes to licensing standard 4.3?
If you disagree, please give reasons for your answer.**

Section 5 of the Licensing Standards: Hours Worked, Working Time Regulations etc

- 2.11 Licensing standard 5.1 currently specifies that “workers are allowed to take statutory breaks”. We intend to amend this standard to reflect the additional guidance issued through “Licensing News” in February 2008. We propose the following revision:

“Workers should be aware of the right to take breaks and the employer is complying with Working Time Regulations.”

- 2.12 If workers freely choose not to take a rest break, then this standard will not be failed at an inspection.

Section 6 of the Licensing Standards: Breaches in Health and Safety, including Training

Safe Place of Work

- 2.13 Health and safety is an essential element in the arrangements under which labour is provided and used. We propose to amend the standards so they more accurately reflect the practicalities of applying the Workplace (Health, Safety and Welfare) Regulations 1992.

- 2.14 We are considering the following changes to licensing standard 6.6 to clarify the responsibility between the labour provider and labour user:

“the gangmaster has cooperated with the labour user to ensure that:

- Adequate and appropriate personal protective equipment has been provided without charge to the workers supplied
- A site specific assessment has been carried out to identify what arrangements with regard to the provision of welfare facilities are required i.e. sanitary conveniences, washing facilities, drinking water, facilities for changing clothes and for rest and consumption of food and drink if it is reasonably practicable* to provide on site

(* where a specific requirement for welfare facilities has been identified under other legislation e.g. in accordance with any Conditions of Use specified for a particular pesticide or plant protection product, this requirement may be absolute and not subject to reasonable practicability)

- Adequate arrangements have been made for first aid and the recording and reporting of reportable accidents and cases of ill health at work”

Transport Arrangements

- 2.15 Licensing standard 6.8 requires any vehicles used are “maintained and that there is no obvious / identifiable serious defects”. We propose to amend this standard to reflect

the additional guidance issued through "Licensing News" in February 2008 to explain what is meant by "obvious / identifiable" serious defects. We apply two common tests:

- Is there evidence through MOT and maintenance records that the vehicle is maintained?
- Would you feel safe travelling in the vehicle? For example, there must be no obvious problems such as seatbelts or unsafe seats / doors.

- 2.16 We also propose to increase the category score attributed to licensing standard 6.9. This standard currently requires "documentary evidence that all vehicles used by a gangmaster for transporting workers are appropriately registered with the DVLA or the country of origin, have a valid vehicle licence (tax disc), MOT certificate (if required) and insurance. Any vehicle without these in place would be deemed unroadworthy, therefore we intend to increase the category to "critical".

Question for consultation

- 9. Do you agree with the proposed changes to licensing standard 6? Please give reasons for your answer.**

Section 7 of the Licensing Standards: Recruitment and Contractual Arrangements

- 2.17 Licensing standard 7.2 includes a restriction that "workers are not charged a finder's fee for finding them work". This standard is currently classed as "Correctable". We intend to designate this requirement as an individual standard in its own right. We consider that under no circumstances should workers be required to pay fees for work finding services, therefore we are minded to classify this new standard as "Critical".

Question for consultation

- 10. Do you agree that prohibiting work finding fees should be a separate standard classed as "Critical"? If you disagree, please give reasons for your answer.**

- 2.18 Following the Government's consultation during 2007 on measures to address issues affecting the vulnerable workers, BERR amended the Conduct of Employment Agencies and Employment Businesses Regulations 2003. The amendments came into force on 6 April 2008. In order to ensure consistency across the sectors regulated by BERR's Employment Agency Standards Inspectorate and those covered by the GLA licensing scheme, we intend to replicate the changes in the revised licensing standards.

Restriction on Using Additional Services

- 2.19 This applies to labour providers who provide and charge for other services, in addition to work-finding. These services may include transport and accommodation. Regulation 5(2) of the Conduct Regulations has been added to allow workers to cancel or withdraw from these services without suffering any detriment or penalty. The worker must give the provider of such services (which in some cases will be the licence holder but in others may be a separate business) written notice in either paper or electronic form. For services relating to providing living accommodation, 10 working days written notice is required. To cancel or withdraw from all other services, 5 working days written notice must be given. We intend to make the equivalent change to paragraph 3 of the Schedule to the Gangmasters (Licensing Conditions) (No. 2) Rules 2006.

Notification of Charges and the Terms of Offer

- 2.20 This provision requires licence holders to inform workers, at the outset and in writing of any fees relating to services which a worker has chosen to take up. As a consequence of the change referred to above, licence holders that offer to provide or arrange charged-for services are now required to set out in writing a notice describing the services for which a fee is payable and setting out the worker's right to cancel or withdraw from the service and the length of notice period required. It is important to note that no charges are allowed for finding work.

Provision of Information to Workers and Labour Users

- 2.21 The Conduct Regulations have been amended to reduce the administrative burden on business where assignments are intended to last for 5 consecutive working days or less.
- 2.22 If the labour provider has already obtained all the essential information regarding a worker's identity, experience, training, qualifications and any necessary authorisations to a labour user, and where the assignment is for 5 working days or less, the labour provider will only need to inform the labour user of the worker's name and give written confirmation that it has obtained this information.
- 2.23 Similarly, if the labour provider has already provided all the essential information regarding the type of work, experience, training, qualifications, and any authorisations necessary, together with any risks to health and safety and the rate of pay to a worker, and where the assignment is for 5 working days or less, and the labour user's details remain unchanged from when the information was first provided, the labour provider will only need to provide the worker with the identity of the labour user and the date on which to start work.
- 2.24 However, where an assignment is extended beyond 5 days, the outstanding information must be sent no later than the end of the eighth day of the assignment, or by the end of the assignment if sooner.

Confidentiality

- 2.25 This change makes it clear that the obligation on labour providers to inform labour users if they receive information that suggests that a worker they have supplied may be unsuitable for the position takes precedence over the general prohibition on disclosing information without the worker's consent (paragraph 18 of the Schedule in the Gangmasters (Licensing Conditions) (No 2) Rules 2006).

Section 10 of the Licensing Standards: Legality and Rights of Workers

- 2.26 We intend to simplify the wording of licensing standard 10.1 to take account of the Immigration, Asylum and Nationality Act 2006. We propose this standard to just state "all workers are legally entitled to work in the UK", with the current reference to section 8 of the Asylum and Immigration Act 1996 being removed.

Question for consultation

- 11. Do you agree with the proposed changes to licensing standard 10.1? If you disagree, please give reasons for your answer.**

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.

Licensing Standard Categories and Scoring

- 3.2 We would welcome views on our approach of categorising and scoring the licensing standards. While we expect licence holders to comply with the standards that are applicable, so far we have taken a proportionate approach through the use of ALCs and do not count scores for lower levels of non-compliance (i.e. reportable and correctable standards) in deciding whether an inspection has failed.
- 3.3 We have proposed in section 3 of this consultation changes to the category of specific standards. However, we are interested in suggestions on further changes to the use of categories and scoring. For example, one stakeholder has suggested that the reportable and correctable categories should no longer be used, with the standards in those categories removed, combined or upgraded. This will leave the critical and major categories.
- 3.4 We would also welcome views on whether the fail score for inspections should remain at 30 points. For example, if the pass score were lower it would mean greater levels of compliance would be required. Alternatively, if the pass score were higher, it would allow an increased number of non-compliances.
- 3.5 Views are also invited on whether the current scoring for individual standards is set at the appropriate level. Should certain standards be classified higher or lower? One stakeholder has recommended the standards relating to tax (2.1 and 2.2) should be upgraded from "major" to "critical" on the grounds tax compliance is a serious matter in terms of addressing exchequer fraud.

Questions for consultation

- 12. Do you think the GLA should continue to use four categories of licensing standard?**
- 13. Views are also 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?**
- 14. If the licensing standards retain four categories of standard, do you think "reportable" and "correctable" standards should contribute to an inspection score?**

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

Please give reasons for your answers.

Removing Licensing Standards

- 3.6 We are interested to receive proposals on whether there are grounds to remove any standards. The GLA is primarily interested in protecting workers and reducing exchequer fraud. Consultees are invited to make recommendations for removing standards with the objective of better focussing the GLA's inspections on safeguarding vulnerable workers rights.

Question for consultation

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

Supplying Self-Employed Workers

- 3.7 If you supply labour or use workers to provide a service, you are responsible for determining their correct employment status. This is important so the workers get the appropriate employment rights and pay the right amount of tax and National Insurance Contributions.
- 3.8 During an inspection, we seek to verify that the worker's employment status has been determined correctly. We apply the same tests as set out in HM Revenue and Customs' guidance.¹
- 3.9 If we consider that a worker should be considered as an employee, then all licensing standards will be tested. If we are satisfied that the worker is self-employed, only the relevant standards will be applied.
- 3.10 We are interested to hear views on whether the standards should include specific standards relating to the supply of self-employed workers. For example, should the labour or service provider check that the worker is registered as self-employed with HMRC? Such a check would help ensure compliance with submitting tax returns, however there would be an associated cost for business to do this.
- 3.11 Furthermore, we have found a number of cases where the labour or service provider has been complicit in arranging false self-employment in order to avoid paying tax and NI. We would welcome views on whether the definition of "fit and proper" should take account of such complicity.

¹ See: www.hmrc.gov.uk/selfemployed/index.shtml

Question for consultation

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

Payroll Companies

- 3.12 We are aware of a number of different business models which relate to out sourcing payroll. A licence for these service providers may be required depending on the relationship with the worker. Where such a business requires a licence, only a limited number of the current standards can be tested.
- 3.13 Views are invited on whether the licensing standards should be changed to reflect these types of business models.

Question for consultation

- 18. Do you think the standards should be amended to reflect the work of payroll and managed service companies? Please give reasons for your answer.**

Labour Providers Based Outside the UK

- 3.14 A number of GLA licence holders are based outside the UK and we expect these licence holders to comply with all applicable standards. We have been in contact with authorities in other EU Member States to put in place arrangements for sharing information and joint working (similar to how the Authority works with other government departments and enforcement agencies). To support this work with authorities in other countries, we would welcome views on whether the standards should include a condition that licence holders based outside the UK must comply with the relevant requirements of their home country. Relevant legislation would include requirements connected with supplying workers.

Questions for consultation

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

Shellfish Gathering

- 3.15 In relation to shellfish gathering, the Gangmasters (Licensing) Act defines acting as a gangmaster as both the supply and use of workers to gather shellfish. We have interpreted this as meaning a licence is required if:
- You employ workers to gather shellfish. This includes employing workers under a contract of employment and / or using self employed workers.
 - Anyone follows you or your supervisor's instructions to gather shellfish. This includes organising or managing groups of workers, even if the workers do not sell directly to you.
 - You or your supervisor control where, when or how others work. This includes providing equipment to gather shellfish.
 - You or your supervisor require anyone to sell their catch to you as the first link in the buying chain.
- 3.16 We would welcome views on the effectiveness of this interpretation. For example, should our interpretation of "gathering shellfish" be revised?
- 3.17 When the GLA extended licensing to cover shellfish gathering in October 2006, specific requirements relating to the industry were incorporated into the standards. These were taken from the Health and Safety Executive's "Guidelines for safe working in estuaries and tidal areas when harvesting cockles, mussels and shrimps"². Licensing standard 1.4 was also added. This stipulates that "where a permit or licence for shellfish gathering is required, the gangmaster must ensure that the workers comply with that permit or licence".
- 3.18 We do not intend to change the requirements of the standards relating to using workers to gather shellfish. However, we are interested in views on the scoring of these standards. At present, all 12 standards specific to shellfish gathering are classed as "critical". Some stakeholders consider this scoring to be disproportionate and the category of some of the standards should be reduced or merged.

Questions for consultation

21. Do you agree the interpretation of who needs a GLA licence for shellfish gathering is sufficiently clear? If you disagree, please explain how the interpretation needs to be changed.
22. Do you agree that the 12 licensing standards relating to shellfish gathering should remain as "critical"? If you disagree, please

² See: www.hse.gov.uk/pubns/estuary.htm

explain how you think these standards should be scored.

Forestry

- 3.19 Businesses involved in the forestry industry have stated that the standards do not adequately reflect the nature of work in the industry.
- 3.20 As outlined above, when the GLA introduced licensing for shellfish gathering, the standards included specific health and safety requirements relating to the industry. Views are welcomed on whether the Health and Safety Executive's specific requirements³ for the forestry industry should be incorporated into the standards.

Question for consultation

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

Licensing Standard 2.8: Paying National Minimum Wage

- 3.21 Licensing standard 2.8 requires that "the worker is paid at least the national or agricultural minimum wage, taking into account the rules on accommodation charges". This standard is designated as "critical". Some stakeholders have called for reference to the agricultural minimum wage to be removed as it provides benefits to workers over and above the national minimum wage, for example through overtime payments, and therefore is concerned with matters beyond protecting workers on the minimum wage. We do not intend to accept this proposal as the payment of the agricultural minimum wage is an important legal requirement of working in agriculture. However, we are minded to amend. It is clear incorrect payment of overtime rates is not as serious as non-payment of the minimum wage itself. Therefore, we would welcome views on whether a separate additional standard should be introduced which covers agricultural minimum wage overtime payments. This new standard could be classified as "major". This would be a more proportionate score for non-compliance with overtime payments.
- 3.22 Licensing standard 2.8 currently refers to complying with the accommodation offset. The accommodation offset is currently set at £30.10. We are aware that a number of reputable labour providers no longer offer accommodation because of the difficulty in providing adequate housing for this amount. This could create a situation where workers are exploited by unscrupulous landlords. Where labour providers provide accommodation, the crucial matter for the GLA is the nature of the relationship between the worker and labour provider (e.g. debt bondage, where the workers are tied to the accommodation). A person may freely choose to pay a higher rate than the offset for a labour provider's accommodation where the housing is adequate and

³ See: www.hse.gov.uk/pubns/forindex.htm

reasonable value. The accommodation offset may technically be breached. However, we do not consider that this would represent exploitation. We would welcome views on how the licensing standards could best take account of such a scenario.

Questions for consultation

- 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")? Please give reasons for your answer.**
- 25. Views are welcome on how the standards could take into account issues relating to the accommodation offset.**

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.

1. Do you agree that the GLA should adopt a “two strikes and you are out” policy?
2. Should such a restriction be indefinite or lapse after a set period of time?
3. Do you agree with this list of “significant” changes?
4. Views are welcome on what an appropriate penalty for not informing the GLA of changes should be? For example, do you agree it would be appropriate to revoke a licence or impose a financial penalty if a business deliberately did not notify the GLA of changes in details?
5. Do you agree with the proposed standards relating to forced labour?
6. (d) above is currently classed as a “Major” standard. Views are welcome on whether this should be upgraded to “Critical” to reflect seriousness of “forced labour”?
7. Do you agree the GLA should use the BERR interpretation of “effectively providing”?
8. Do you agree with the proposed changes to licensing standard 4.3?
9. Do you agree with the proposed changes to licensing standard 6?
10. Do you agree that prohibiting work finding fees should be a separate standard classed as “Critical”?
11. Do you agree with the proposed changes to licensing standard 10.1?
12. Do you think the GLA should continue to use four categories of licensing standard?
13. Views are also 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?
14. If the licensing standards retain four categories of standard, do you think “reportable” and “correctable” standards should contribute to an inspection score?
15. Should any changes be made to scoring of individual standards?

16. Do you think there are any standards which could be removed in order to better focus the GLA's work?
17. Views are welcomed on whether the standards should include requirements specifically relating to the supply of self-employed workers.
18. Do you think the standards should be amended to reflect the work of payroll and managed service companies?
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?
20. If the standards included a specific condition, what category of standard should it be classed as?
21. Do you agree the interpretation of who needs a GLA licence for shellfish gathering is sufficiently clear?
22. Do you agree that the 12 licensing standards relating to shellfish gathering should remain as "critical"?
23. Should the standards be changed to better reflect the HSE requirements for the forestry industry?
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")?
25. Views are welcome on how the standards could take into account issues relating to the accommodation offset.

5. How to Respond

- 5.1 The consultation period began on **4 August 2008** and will run until **24 October 2008**. 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 Policy and Communications
Gangmasters Licensing Authority, PO Box 8538, Nottingham, NG8 9AF
Telephone: 0115 900 8964
Fax: 0115 900 8943
Email: consultation@gla.gsi.gov.uk

- 5.2 When responding please state whether you are responding as an individual, a business or as a representative body. If the latter, please make it clear who the body represents, and how the views of members were assembled.
- 5.3 A list of those being consulted is available on the GLA website (www.gla.gov.uk). If you have any suggestions of others who ought, or who may wish to be involved in this process, please contact us.
- 5.4 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.**
- 5.5 **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.
- 5.6 A summary of responses will be published following the end of the consultation exercise on www.gla.gov.uk. Paper copies will be available on request.

Annex A – GLA Licensing Standards, issued October 2006

Licensing Standard 1: Possession of Valid Licences

Guidance

Persons acting as gangmasters in the regulated sectors must be licensed by the Gangmasters Licensing Authority.

Licence holders must also notify the GLA of any significant changes in details. Changes of personal details, address, names on the licence, directors etc must be reported to the GLA within 20 working days.

Persons acting as a “gangmaster” must act in a fit and proper manner. The GLA considers a “fit and proper” person to be any individual or organisation operating in the licensable sectors that complies with the licensing standards. In addition, individuals or organisations must not have been the subject of relevant convictions for offences connected to the activities covered by the licensing standards, particularly where those offences relate to victimisation, harassment and violence towards workers. These offences may be a bar to receiving a licence. The GLA may also consider other information where this is brought to its attention along with any independent investigation by the GLA identifies activities that result in the individual or organisation being considered unfit to hold a licence.

An inspection will seek to assure that:

1.1	C	A current GLA licence to act as a gangmaster under the 2004 Act is in issue (NB: This applies to post licence decision holders and their sub-contractors only, not new applicants) and the licence holder is or remains fit and proper to hold it.
1.2	Co	Licence details are up to date with all relevant changes of circumstances notified within proper time scales.
1.3	Co	The licence holder and any person named or otherwise specified on the licence must provide: <ul style="list-style-type: none"> • his unique reference number (URN) to the labour user when he enters into arrangements to supply workers or services; • on demand, his URN to any workers supplied by him to a labour user; • on demand, his licence number to any worker used by him; and • on demand, details of any additional licence conditions to the labour user or any worker supplied or used by him.
1.4	C	Where a permit or licence for shellfish gathering is required, the gangmaster must ensure that the workers comply with that permit or licence.

Licensing Standard 2: Payment of Wages, Tax, National Insurance, VAT: Improper Deductions and Allied Matters

Guidance

There must be proper schemes to collect National Insurance, income tax and VAT and proper records to show that the gangmaster has accounted to the relevant statutory authorities for all National Insurance and income tax deductions, all Employers' National Insurance contributions and all VAT charged. Documents must be properly maintained and retained. There must not be any deductions made other than statutory deductions from a worker's pay without their express, written permission. The gangmaster must provide proper, complete and accurate wage slips.

At least the minimum wage must be paid for the job along with any benefits to which the employee is entitled.

An inspection will seek to assure that:**Proper Systems are in Place for the Collection of Tax/National Insurance/VAT**

2.1	M	There is evidence that the gangmaster is registered as an employer with HM Revenue and Customs (HMRC) and has a PAYE number.
2.2	M	Deductions from workers' pay of income tax and National Insurance are accurate, appropriate and paid to HMRC.
2.3	R	If the business exceeds the VAT threshold, there is documentary evidence that it is registered with HMRC and charges and pays VAT.

Improper Deductions/Withholding of Wages

2.4	Co	There is evidence that the gangmaster has an accurate payroll system in place whether in a paper or electronic form.
2.5	M	Where deductions from wages, other than those legally required, are made (e.g. for transport), there is evidence on file of workers' written consent to those deductions.
2.6	M	[Scotland - agricultural workers only ⁴ : No deductions from wages are made, other than those legally allowed, and any other payments being made by workers outwith the wages system to the gangmaster are supported by evidence on file of workers' written consent.]
2.7	M	The gangmaster has not withheld or threatened to withhold payment to any worker on the following grounds:
		<ul style="list-style-type: none"> • non-receipt of payment from the labour user • the worker failing to prove that he has worked during a particular period of time (although the licence holder can satisfy themselves that the worker did carry out the work using other means) • the worker only having worked during the period to which the payment relates • any matter within the control of the gangmaster.

⁴ Scottish provisions apply only to workers engaged in agriculture (the definition of which also includes horticulture, some fish farming and, through case law, packaging produce grown within the same business enterprise). What it does not include is most fish processing, shellfish gathering and secondary packaging/processing where National Minimum Wage Rules apply.

Minimum Wage in Payment		
2.8	C	The worker is paid at least the national or agricultural minimum wage, taking into account the rules on accommodation charges.
Benefits Paid (e.g. Sick Pay, Paid Annual Leave Entitlement)		
2.9	M	There is evidence that all workers receive paid annual leave entitlement, and any of the other benefits they are entitled to. Records of any paid annual leave entitlement, statutory sick pay, statutory paternity pay, statutory maternity pay and statutory adoption pay are kept on workers' files.
Wage Slips Provided		
2.10	M	There is evidence that workers have been provided with itemised accurate payslips for each pay period showing at least their income tax, National Insurance payments and other authorised deductions.
Licensing Standard 3: Debt Bondage, Harsh Treatment or Intimidation of Workers		
Guidance		
<p>The GLA will take a very serious view of any evidence of abuse against workers in the following categories. Employment must be freely chosen and no-one must be retained against their will, whether or not there is a debt owing.</p> <p>If a worker is loaned money by the gangmaster to meet travel or other expenses in order to take up a position, they must be provided with details in writing of the amount loaned and the agreed repayment terms.</p> <p>If loan repayments are deducted from workers' wages, they must give their written permission for this to be done.</p> <p>Workers (including those whose first language is not English) should be aware of how to seek redress or make a complaint where there has been harassment. There should be no evidence that the gangmaster does not deal with such cases properly.</p>		
An inspection will seek to assure that:		
Unfair Treatment		
3.1	C	Workers are not subjected to physical or mental mistreatment.
Existence of any Bonded Debt: for Travel, Unearned Wages, Job Transfer		
3.2	C	There are no debts to the gangmaster that prevent a person freely seeking other employment.
3.3	M	Any debts properly entered into, or agreed recoveries from wages, are in writing and do not seek to cover more than the amount agreed or the recoveries allowed.
3.4	M	No worker is disadvantaged from taking up permanent employment by the imposition of a transfer fee other than that allowed in the Gangmasters (Licensing Conditions) Rules 2006.
3.5	R	A worker is not penalised for giving notice, nor does the worker have to pass on details of any new employment.

Employment Freely Chosen		
3.6	C	That a person has freely chosen that employment and not because they were kept against their will and are free to leave their employment/job without incurring (or fear of incurring) a penalty.
Passports/Identity not Retained		
3.7	C	Workers are not required to surrender identity papers such as passports, beyond initial illegal working checks, for retention (see section 10.1 below).
Harassment, Abuse, Complaints Procedures		
3.8	Co	The gangmaster properly deals with disciplinary matters or complaints.
Confidentiality		
Guidance		
<p>The Data Protection Act as well as the gangmaster's duty to safeguard workers' interests, requires careful handling of any confidential information. Generally the written consent of the worker must be obtained before passing on any personal information to others. Certain statutory bodies (including the GLA) have the power to ask for records, examine them, copy them or even retain them.</p> <p>It cannot be made a condition of employment that they give that consent.</p>		
An inspection will seek to assure that:		
3.9	R	<p>The gangmaster does not disclose information relating to a worker, without the prior consent of that worker, except:</p> <ul style="list-style-type: none"> • for the purposes of any legal proceedings (including arbitration) • in the case of a worker who is a member of a professional body, to the professional body of which they are a member • for the purposes of apprehension or prosecution of offenders • for the purposes of national security or • as required by any other enactment of law
3.10	Co	Data and records are kept securely.
Licensing Standard 4: Workers' Accommodation		
Guidance		
<p>Any accommodation provided, or effectively provided, by the gangmaster should conform to current legislation. There should be no evidence of poor or overcrowded conditions or failure to conform to local housing regulations on Housing of Multiple Occupation. Any charges for accommodation must be compliant with the national and agricultural minimum wage regulations.</p> <p>A licence holder may not arrange for a worker to take up a position other than as a labour user's employee (within the meaning of section 230(1) of the Employment Rights Act 1996) if, in order to take up that position, the worker must occupy accommodation other than their home, unless:</p> <ul style="list-style-type: none"> • suitable accommodation will be available for the worker • details have been provided to the worker, including the terms on which it is offered and any cost 		

- suitable arrangements have been made for the worker to travel to such accommodation and for them to travel home

If a worker is under the age of 18, a gangmaster may not arrange for them to take up a position that will require them to live away from home unless the parent or guardian of the worker has consented.

An inspection will seek to assure that:

4.1	M	No under-18 year-olds are compelled to stay away from home for work purposes.
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4.2	M	Where workers live in accommodation provided by the gangmaster, they are allowed to find suitable alternative accommodation after giving an agreed notice period.
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4.3	C	<p>Where workers live in accommodation provided by the gangmaster, it contains appropriate facilities (e.g. water, power, heating, bedding, sanitation) and is safe for its inhabitants. The GLA will expect to see evidence that any electrical equipment provided for cooking, heating, recreational or similar use is being properly maintained and that tenants have been supplied with copies of the most recent gas safety certificate as required by the current Gas Safety (Installation and Use) Regulations.</p> <p>[Scotland only Where appropriate, accommodation is licensed or registered in accordance with the Antisocial Behaviour etc (Scotland) Act 2004 (Part 8, registration of landlords) or the Civic Government (Scotland) Act 1982 (Licensing of Houses in Multiple Occupation) Order 2000.]</p> <p>[England, Wales only There should be no evidence that the room and space standards set out in the Housing Act 1985 and 2004 and associated secondary legislation are breached nor that there is evidence of misuse of Houses of Multiple Occupancy (HMO).]</p>
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Licensing Standard 5: Hours Worked, Working Time Regulations, etc

Guidance

An accurate record of hours worked by workers must be kept and made available for inspection. An opt out of the Working Time Regulations 1998 (as amended) must be a free choice by the worker and substantiated by a written, signed agreement. There must be no evidence that workers are being exploited as a consequence of failure to observe these provisions.

The gangmaster must allow workers to take the breaks to which they are entitled during the working day. (See also Section 6 of these standards concerning drivers)

An inspection will seek to assure that:

5.1	M	Workers are allowed to take statutory breaks.
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5.2	M	There is evidence that any workers working in excess of 48 hours per week have freely signed an opt-out.
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5.3	M	Accurate records are kept of days and hours worked for all workers.
Licensing Standard 6: Breaches in Health and Safety, Including Training		
Guidance		
<p>Health and safety legislation is complex but is an essential element of the arrangements under which labour is provided and works. The allocation of responsibility under the legislation depends on the relationship between the gangmaster and labour user. In many cases the employer, for the purposes of applying health and safety legislation, is likely to be the labour user; but this will not necessarily always be the case.</p> <p>The GLA will expect clarity about and written clarification as to whether the gangmaster or labour user will be responsible for managing the health and safety of the workers provided. The conditions at work to which workers are exposed should comply with the legislation. This extends to transport arrangements and the place(s) of work.</p> <p>It is particularly important that adequate health and safety training is given to workers and that the gangmaster and labour user have agreed, in writing, who will be responsible for providing that training. No charge may be made for such training, which should take place during working hours.</p> <p>Any vehicles used by the gangmaster to transport workers to and from their place of work must be roadworthy, legal and driven only by drivers holding appropriate licences.</p>		
An inspection will seek to assure that:		
6.1	M	<p>The gangmaster has co-operated with the labour user to ensure that:</p> <ul style="list-style-type: none"> • responsibility for managing the health and safety of workers has been agreed and assigned and that • the health and safety risks to which they may be exposed at work are properly controlled
6.2	M	<p>The gangmaster has co-operated with the labour user to ensure that responsibility for:</p> <ul style="list-style-type: none"> • the provision of information to workers about any special qualifications or skills they require to do the work for which they have been employed has been agreed and assigned • Any health and safety training, including induction training deemed necessary to carry out the work safely has been agreed and assigned and that • the workers provided have received any necessary health and safety (including induction) training appropriate to the site(s) at which they are working and the work they have been employed to do. The information and training should be comprehensible
6.3	Co	Where a labour user employs more than five persons, or a gangmaster provides 5 or more workers to a labour user, the significant findings of any risk assessments should be recorded in a form which is retrievable and available to safety or other worker representatives or to inspectors from the GLA or the Health and Safety Executive.

6.4	R	No charge is made for health and safety training required to carry out work and any time spent on training (including any training arranged outside of an employee's normal working hours) is treated as an extension of time at work.
Safe Place of Work		
6.5	M	The gangmaster has co-operated with the labour user to ensure that working conditions at the site(s) to which workers are provided comply with relevant health and safety legislation.
6.6	M	The gangmaster has co-operated with the labour user to ensure that: <ul style="list-style-type: none"> adequate and appropriate personal protective equipment has been provided to the workers they supply and that adequate arrangements have been made with regard to the provision of sanitary conveniences, washing facilities, drinking water, facilities for changing clothes and for rest and the consumption of food and drink, for first aid and the recording and reporting of reportable accidents and cases of ill health at work
Transport Arrangements		
6.7	M	Evidence that drivers or workers operating vehicles, mobile machinery or plant are not under age. They should also hold a current, relevant licence or certificate which is required by legislation and should not drive in excess of their permitted hours.
6.8	C	The gangmaster's vehicles are being maintained and that there are no obvious/identifiable serious safety defects.
6.9	R	There is documentary evidence that all vehicles used by a gangmaster for transporting workers are appropriately registered with the DVLA or the country of origin, have a valid vehicle licence (tax disc), MOT certificate (if required) and insurance.
6.10	R	There are records of all drivers including their names, driving licence number and type.
6.11	M	There is documentary evidence that vehicles with nine or more passenger seats used for hire or reward are registered as Public Service Vehicles (PSV) and that drivers have Passenger Carrying Vehicle (PCV) entitlement.
Shellfish Gathering – Safe Working in Estuaries and Tidal Areas		
Guidance		
Gangmasters must be familiar with the HSE current guidelines posted on the HSE website: www.hse.gov.uk/pubns/estuary.htm		
Supervision		
6.12	C	Gangmasters must ensure that each group of workers has a recognised and competent supervisor/group leader. Any appointed person must be named on the gangmasters licence and should: <ul style="list-style-type: none"> be familiar with the use of equipment and procedures required by the standards specified below be able to communicate directly with workers under his/her control

		<ul style="list-style-type: none"> accompany the workforce at all times when working below the high tide mark
Information		
6.13	C	<p>As a minimum, the gangmaster and any supervisor / group leader must ensure workers under their control have:</p> <ul style="list-style-type: none"> local tide tables and an accurate watch knowledge of current and forecast weather conditions, e.g. fog/flooding knowledge of local conditions, e.g. quicksands, shifting gullies, rivers in flood, the nature and speed of the tide
Equipment		
6.14	C	<p>The gangmaster and any supervisor/group leader must ensure workers under their control have:</p> <ul style="list-style-type: none"> a suitable communications device - either a VHF marine band radio or a mobile telephone according to reception. Batteries should be fully charged and the devices should be kept dry a location device, preferably a Global Positioning Unit (GPS) and/or compass high-visibility clothing which is both warm and weatherproof emergency equipment - whistles in case of fog/mist, and flares
Planning		
6.15	C	<p>When planning work, the gangmaster and any supervisor/group leader must:</p> <ul style="list-style-type: none"> have emergency telephone numbers for the Maritime and Coastguard Agency and other emergency services recognise that it is vital to leave enough time to get workers and vehicles ashore safely. Extra time must be allowed for possible problems be able to identify and cope with emergencies such as fog and quicksands recognise that working at night creates additional risks and requires appropriate and special precautions avoid lone working where possible notify the Maritime and Coastguard Agency Rescue and Coordination Centre of times going out/coming back, where the work is planned to take place, the size of the group, the licence holder's URN and contact details make sure that groups of workers are not too large. Group leaders must be able to adequately supervise all workers
Getting to the Work Area		
6.16	C	Vehicles used to access the fishery must be suitable for the work area, e.g. tractors, ATVs or similar.
6.17	C	Tractors must be fitted with approved cabs or rollover protection.
6.18	C	Where ATVs are used, the drivers should be competent and specifically trained in their use. A suitable and sufficient risk assessment should have been carried out to determine where and in what circumstances drivers should be provided with and should wear appropriate safety helmets.
6.19	C	All vehicles should be roadworthy and properly maintained and should carry enough fuel for emergencies.
6.20	C	Where trailers pulled by tractors are used to carry passengers, they must be

		fitted with headboards, tailboards and suitable side protection to prevent passengers falling off. Passengers should not be carried in tractor cabs (unless the manufacturer has provided a second seat), on tractor steps or on the drawbar. Normally ATVs should not be used to carry more passengers than specified in the manufacturer's handbook.
Lifejackets and Liferafts		
6.21	C	Where applicable, users of lifejackets and liferafts must be properly trained and instructed in their use. They must be able to operate them in an emergency. The devices must also be routinely checked (daily, weekly and monthly) and maintained in accordance with the supplier's instructions.
Use of Boats		
6.22	C	Any boat used for accessing fisheries and transporting persons must be an MCA certificated workboat.
Licensing Standard 7: Recruitment and Contractual Arrangements		
Guidance		
Recruitment must be fair and open and non discriminatory in accordance with UK legislation.		
There must be written terms of engagement whether a contract of employment or a contract for services with workers and these must not be changed without their written consent. Workers should understand the terms on which they have been taken on including procedures to be followed if they are found to be unsatisfactory or unsuitable for the work for which they were hired.		
The agreement between the labour user and the gangmaster should be in writing (see Appendix 1, paragraph 2)		
An inspection will seek to assure that:		
Recruitment		
7.1	R	Applicants for employment are not discriminated against when employment is offered.
7.2	Co	The gangmaster will not have supplied a worker to a labour user unless they have confirmed: <ul style="list-style-type: none"> • the identity of the worker • that the worker has the experience, training, qualifications and any authorisation which the gangmaster or labour user considers is necessary, or which is required by law or by any professional body • the worker is willing to work in the position which the labour user seeks to fill • workers are not charged a finder's fee for finding them work • they are not obliged to use the services of the licence holder to hire or purchase goods or services as a condition of finding work
Terms and Conditions		
Guidance		
Terms and conditions should be in a format that can be easily read and understood and workers should be given the opportunity to raise concerns or queries in relation to those terms before being supplied to a labour user.		

A gangmaster may not enter into a contract with a labour user on a worker's behalf or on behalf of the labour user with the worker, without that worker's express permission.

7.3	M	There is evidence that all workers who have been employed continuously for one month or more under a contract of employment have a written statement of employment particulars. Or, if workers are engaged under contracts for services, there is evidence that these are agreed and provided to the workers before work commences.
		The terms that must be agreed include:
		<ul style="list-style-type: none"> whether the worker is or will be supplied by the licence holder under a contract of employment, or for services, and the terms and conditions that will apply
		<ul style="list-style-type: none"> an undertaking to pay the worker for any work carried out regardless of whether the gangmaster has been paid by the labour user
		<ul style="list-style-type: none"> the length of termination the worker is required to give and entitled to receive, if any
		<ul style="list-style-type: none"> either the worker's pay rate, or the minimum rate to be expected the intervals at which the earnings will be paid; and details of any entitlement to paid holidays, SSP and other benefits

7.4	M	There are no changes made either to contracts of employment or contracts for service without written consent by the employee.
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7.5	Co	No gangmaster may introduce a worker for direct employment by a labour user and continue to pay them (or make arrangements for such payment).
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Licensing Standard 8: Sub-contracting

Guidance

A gangmaster who sub-contracts becomes a labour user for the purposes of the Gangmasters (Licensing) Act and must ensure that the sub-contractor he engages is licensed by the GLA.

The gangmaster cannot sub-contract any responsibilities with a labour user to another gangmaster without the prior consent of that labour user, which must be in writing.

A sub-contracting gangmaster must provide the labour user (including the licence holder to whom they are sub-contracting) with their URN as well as any other licence details (including additional licence conditions, if any), if so requested.

They must keep proper records as detailed in Appendix 1 (Record Keeping).

An inspection will seek to assure that:

8.1	C	Any sub-contractors used must be properly and currently licensed by the GLA.
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8.2	M	The names and any other names of sub-contractor(s) used are recorded as well as details of workers provided and the number of hours worked by them as laid down in Appendix 1, paragraph 2.
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8.3	Co	There is documentary evidence of the agreement between the gangmaster and all sub-contractors.
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8.4	Co	The gangmaster has the worker's permission before transferring them to another licence holder.
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Licensing Standard 9: Identity Issues, Under-Age Working

Guidance

The identity of all workers must be known to the gangmaster and verified. Proper records must be maintained which identify each worker and the hours they work. The GLA licensing conditions require that the gangmaster must ensure that the labour user can identify those workers supplied. See Appendix 1, paragraph 1 concerning the records that must be kept.

The law prohibits under-age working. Any offences identified will be treated very seriously and passed on to the relevant Authorities.

An inspection will seek to assure that:

Identity Issues

9.1	M	Records on workers' files include their name, date of birth, address, National Insurance number, and documentation showing their entitlement to work in the UK.
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Proof of Age (Underage Working)

9.2	M	Details of any work activities, including times and dates worked, carried out by children and young workers are held on file.
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9.3	R	There are copies of adequate and suitable risk assessments available where young persons are employed.
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9.4	M	Children and/or young persons are only carrying out work permitted by law.
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Licensing Standard 10: Legality and Rights of Workers

Guidance

Only those who are legally able to work may be employed. It is essential that the gangmaster ensures that proper records are kept and checks made in line with Home Office guidance.

To demonstrate compliance with 10.1 (below), the gangmaster should be able to produce copies of supporting documentation that confirms a person's entitlement to work in the UK (copies mean a photocopy or recording of the document electronically). The specified documents in question are detailed in the:

- Immigration (Restrictions on Employment) Order 1996 (for workers employed from 27 January 1997 to 30 April 2004)
- Immigration (Restrictions on Employment) Order 2004 (for workers employed since 1 May 2004)

The guidance on this subject is available in the Home Office publication "Comprehensive guidance for United Kingdom employers on changes to the law on preventing illegal working" or on the Home Office Immigration and Nationality website under preventing illegal working.

The gangmaster must respect a worker's right to belong to a trade union and to participate in its activities.

An inspection will seek to assure that:

Legality of Workers – Section 8 of the Asylum and Immigration Act 1996

10.1	M	All workers are legally entitled to work in the UK. Employers will be required to show they have complied fully with Section 8 of the Asylum and Immigration Act 1996 in relation to workers employed since January 1997.
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10.2	R	There should be no evidence of student workers (who generally have the limited right to work as part of their leave to remain in the UK) working in excess of 20 hours per week during term time.
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Trade Union Matters

10.3	M	Workers are not prevented from taking trade union membership and are not penalised for doing so.
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10.4	R	The gangmaster must not supply a worker to carry out the duties of a worker involved in an official industrial dispute or to perform the duties of any other worker employed by the labour user who has replaced the worker on strike.
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Appendix 1: Record Keeping

Guidance

The licence conditions attached to the main Gangmasters (Licensing) Act 2004 requires in addition to the above provisions, that the gangmaster keeps the following records. These are appended for information. Most are included in the main body of the licensing standards, especially Section 8 (Sub-contracting) and Section 9 (Identity Issues). Records may be kept manually or electronically.

Any shortcomings in this section alone will not count towards the scoring of errors as part of any inspection, except where they appear in the main body of the licensing standards above.

Every gangmaster must record, as soon as reasonably practicable, the following details in relation to every application received from a worker:

- the date the terms between the licence holder and worker were agreed
- the worker's name, address and date of birth
- any terms which apply or will apply between the licence holder and the worker, and any document recording any variation
- any details of the worker's training, experience or qualifications and any authorisation to undertake particular work (and copies of any documentary evidence of the same obtained by the gangmaster)
- details of any requirements specified by the worker in relation to taking up employment
- the names of labour users or sub-contractors to whom the worker is supplied
- details of any resulting engagement and the date from which it takes effect
- the date the contract was terminated (where applicable) and
- details of any enquiries made about the worker and the position concerned with copies of all relevant documents

Every licence holder must record, as soon as reasonably practicable, the following details relating to labour users:

- the date terms are agreed between the licence holder and the labour user
- the labour user's name and address, and location of the place of work if different

- details of any sub-contractors
- details of the position(s) and type of work the labour user seeks to fill
- the duration or likely duration of the work
- any experience, training, ability, qualifications, and authorisation required by the licence holder or labour user by law, or by any professional body; and any other conditions attaching to the position(s) the labour user seeks to fill
- the terms offered in respect of the position(s) the labour user seeks to fill
- a copy of the terms between the licence holder and the labour user, and any document recording any variation
- the names of workers supplied
- details of enquiries about the labour user and the position they seek to fill, with copies of all relevant documents and dates of their receipt
- the details of each resulting engagement and date from which it takes effect and
- dates of requests by the gangmaster for fees or other payment from the labour user and of receipt of such fees or other payments, and copies of statements or invoices

Every gangmaster must record, as soon as reasonably practicable, the following details relating to other licence holders:

- names of any other licence holders whose services the licence holder uses, and details of enquiries made to ascertain that the other licence holder is licensed
- date and copy of any agreement to sub-contract

These records must be kept for at least one year. The records may be kept at any premises a gangmaster uses for or in connection with the carrying on of his business, or elsewhere. If kept elsewhere the licence holder must ensure that they are readily accessible and capable of being delivered to the licence holder's UK premises or the Authority within two working days. All records may be kept in written or electronic form.

Annex B – Numbers of Non-Compliances by Licensing Standard

Licensing Standard	Category	Number of non-compliances
1.1	Critical	7
1.2	Correctable	32
1.3	Correctable	5
2.1	Major	9
2.2	Major	12
2.3	Reportable	30
2.4	Correctable	36
2.5	Major	69
2.7	Major	35
2.8	Critical	37
2.9	Major	80
2.10	Major	18
3.1	Critical	6
3.2	Critical	7
3.3	Major	19
3.4	Major	5
3.5	Reportable	13
3.6	Critical	9
3.7	Critical	4
3.8	Correctable	94
3.9	Reportable	45
3.10	Correctable	44
4.2	Major	2
4.3	Critical	14
5.1	Major	11
5.2	Major	46
5.3	Major	36
6.1	Major	133
6.2	Major	76
6.3	Correctable	109
6.4	Reportable	23
6.5	Major	21
6.6	Major	63
6.7	Major	15
6.8	Critical	10
6.9	Reportable	71
6.10	Reportable	47
6.11	Major	52
7.1	Reportable	12
7.3	Major	180
7.4	Major	7
8.1	Critical	11
8.2	Major	3
8.3	Correctable	23
9.1	Major	60
9.2	Major	3
9.3	Reportable	14
9.4	Major	1

10.1	Major	60
10.2	Reportable	10
10.3	Major	1

Annex C – Impact Assessment

Summary: Intervention and Options

Contact for enquiries: David Nix, david.nix@gla.gsi.gov.uk, 0115 900 8964

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.

There may be costs associated with the Authority's proposal to require new licence holders to notify (either by telephone, email or letter) the GLA once they start supplying workers in the licensed sectors. However, it is estimated these will be negligible.

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 1,186 licence holders (as of 22 July 2008).

Impact on Admin Burdens Baseline

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

There may be some small administrative costs for notifying the GLA.

Evidence Base

Please see pages 5 – 19 in this consultation document.

Specific Impact Tests Checklist

Type of testing undertaken	Results in evidence base?	Results annexed?
Competition Assessment	No	No
Small Firms Impact Test	No	No
Legal Aid	N/A	N/A
Sustainable Development	N/A	N/A
Carbon Assessment	N/A	N/A
Other Environment	N/A	N/A
Health Impact Assessment	N/A	N/A
Race Equality	N/A	N/A
Disability Equality	N/A	N/A
Gender Equality	N/A	N/A
Human Rights	N/A	N/A
Rural Proofing	N/A	N/A

Annex D – Consultation Criteria

The consultation is being conducted in line with the Code of Practice on Consultation. The Criteria are listed below. The full version can be accessed at:

www.berr.gov.uk/bre/consultation%20guidance/page44420.html

The Six Consultation Criteria

- Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
- Be clear about who may be affected, what questions are being asked, and the timescale for responses.
- Ensure that your consultation is clear, concise and widely accessible.
- Give feedback regarding the responses received and how the consultation process influenced the policy.
- Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
- Ensure your consultation follows better regulation best practice, including carrying out an Impact Assessment if appropriate.

If you feel that the consultation does not satisfy these criteria please contact:

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Gangmasters Licensing Authority
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