

9.3 Licensing standards

January 2006

BOARD PAPER REFERENCE – GLA8/9.3 – LICENSING STANDARDS

Issue

1. To present to the Board the Licensing Standards (v8.7), amended in the light of feedback received from the recent consultation exercise and to seek the Board's approval of the changes made.

Recommendations

2. To note the changes between versions 8.3 and 8.7;
3. To approve version 8.7 as the main working Licensing Standards.

Background

4. The Licensing Standards were first introduced to the Board in September, where the general outline was approved. Considerable feedback was received at that time and by the time the Consultation process took place in December 2005, version 8.3 was circulated for comment. Version 8.6 was also made available to the Board in December.
5. Following meetings with various parties, including REC and the ALP, combined with the main points arising from the Consultation, a revised edition, v 8.7 has now been prepared.

Key Issues

6. The consultation, launched on the basis of Version 8.3 of the GLA Licensing Standards, supported the need for the principle of licensing decisions being made on scored performance against published standards.
7. A number of issues were raised that included:
 - The scoring system was considered to be insufficiently proportionate.
 - The approach for using Additional Licensing Conditions was considered to be complex and too onerous for addressing minor non-compliances.
 - The REC urged that the conditions be more closely aligned with the Employment Agencies Act Conduct Regulations. In particular Regulation 10, which governs transfer fees between labour providers and labour users, of the Conduct regulations should be included.
 - An observation that the Licensing Standards were far less appropriate to businesses involved in shellfish gathering, than to those in agriculture, horticulture and the associated processing.

Recommendations

8. Immediately prior to consultation, the GLA Board had expressed major concerns regarding the lack of proportionality indicated by Version 8.3 of the Licensing Standards. As a result, the GLA produced Version 8.6 of the Standards that was circulated to Board members and discussed with other stakeholders during the wide range of consultation events. Version 8.6 removed many of the concerns regarding proportionality.
9. Version 8.7 has built on this further with a reduction of an original 73 standards (8 critical; 30 Major; 15 Reportable; 20 correctable).reduced to 54 (6 critical; 28 Major; 8 reportable; 12 correctable), by careful examination of any duplications or lack of clarity.
10. In the light of responses to the Consultation, version 8.7 has included much of the useful feedback supplied by different parties, whilst seeking to address the overall concerns over proportionality, the labour provider's responsibilities in the areas of accommodation, and Health and Safety matters.
11. Some amalgamation of standards has dealt with concerns of repetitions or the dangers of overmarking where more than one standard seemed to be an extension of the last. This has resulted in an overall welcome simplification. Similarly standards deemed too difficult to measure accurately have been subsumed into the comment area or removed altogether.

Proportionality

12. The scoring system has been revised further in the light of consultation responses. The revised version 8.7 uses a revised scoring system of Critical (30 points); Major (8 points); Reportable (4 points), and Correctable (2 points). A score exceeding 30 points would result in a failed inspection, leading to refusal of licence for a new applicant or revocation for a current licence holder.
13. Further proportionality is proposed for Year-1. During the first year, the GLA will use only Critical and Major non-compliances to make licensing decisions. Reportable and Correctable non-compliances will only be used to contribute to the risk rating for Compliance activities.
14. The GLA acknowledges that using Additional Licensing Conditions (ALCs) attached to a licence to address minor non-compliances could be disproportionate. Therefore, the GLA proposes to issue ALCs for Licensing Standards in the Major category only. Licence holders will still be notified of Reportable and Correctable non-compliances and given a date to complete remedial action, but they will not be a formal condition of the licence in the first year. Reportable and Correctable non-compliances will instead be used to inform the licence holder's Risk Rating, which will determine follow-up Compliance Inspection activity. This approach will be monitored and reviewed during the first year of live operations.

Conduct Regulations

15. Versions 8.3 and 8.6 of the Standards contained only the provisions from the Conduct Regulations that were considered to be appropriate to a labour provider

operating in the sectors for which the GLA has authority. However, the Authority acknowledges the need for a consistent approach for labour providers who supply into both the licensable sector and other sectors. Therefore, the GLA is proposing to include relevant Conduct Regulations in the Licensing Standards (excluding those provisions exclusively aimed at the entertainment industry), in response to REC's comments. The Conduct Regulations now to be included are:

- Restrictions on providing work-seekers in industrial disputes (Reg. 7 of the Conduct Regulations).
- Restriction on charges to hirers (Reg. 10 of the Conduct Regulations).
- Entering a contract on behalf of a client (Reg. 11 of the Conduct Regulations).
- Requirement to obtain agreement to terms with hirers (Reg. 17 of the Conduct Regulations).
- Civil liability (Reg. 30 of the Conduct Regulations).

(These are to be found at Appendix 2 of the Licensing Standards until they are included in GLA Regulations.)

Shellfish

16. The GLA acknowledges that the Licensing Standards as proposed do not fit comfortably with at least some areas of the shellfish-gathering industry. A workshop specifically for the Shellfish industry is arranged for early in the New Year. The approach for labour providers operating in this sector will be revised accordingly.

Licensing Conditions, Version 8.7

17. In addition to the above, v8.7 other changes, tracked from v 8.3 to 8.7 are shown in template form at Appendix 1 to this document. For clarity, the present categories are used in order to make clear what changes have been made. In summary the changes are:

- The concerns of the Board and respondents to the Consultation criticising the number of standards have been addressed: Standards reduced from 73 to 54;
- Proportionality is reflected in the tone and guidance of v 8.7;
- The points raised in the consultation have been included as far as possible;
- The focus is definitely on the Labour Provider (particularly for Health and Safety issues, Transport and accommodation);
- Formatting and numbering is now much clearer;
- Critical Standards are now boxed for clarity;
- Ambiguities and repetitions should now be removed;
- Un-measurable standards and "best practice" are no longer present
- The Standards now address more succinctly the GLA Mission Statement.

Appendix 1**Comparative Template of the Licensing Standards (vv8.3-8.7)**

The attached table provides a comparison between v 8.3 (originally shown to the Board and included in the Licensing Consultation document), v8.6 (subsequently issued to Board members [versions 8.4-8.5 contained very minor amendments, which appeared in v8.6, and were not issued]), and v8.7.

The present categories of severity of non-compliance are: critical, major, reportable and correctable. Previous versions were based on three categories with the most serious breaches called "super-critical" now termed "critical." In order to avoid confusion, the table uses the most recent nomenclature only, and translating the former versions to the current categorisation in order to make comparisons easier to follow.

Other changes are highlighted below under "notes." (Appendix 2)

<u>LS No</u>	V 8.3	8.6	8.7	Comment
1.1	C	C	C	
1.2	Co	Co	Co	
2.1.1	M	M	M	
2.1.2	M	M	M	Redrafted to include payment to HMRC
2.1.3	R	R	R	
2.1.4	R	X	X	Section 2.1 Condensed and simplified
2.1.5	R	X	X	Section 2.1 Condensed and simplified
2.2.1	Co	Co	Co	
2.2.2	M	M	M	
2.2.3	M	M	M	
2.3	M	M	M	Reworded
2.4	M	M	M	
2.5	M	M	M	
3.1.1	C	C	C	Reworded
3.1.2	C	X	X	Amalgamated and reworded into 3.1.1
3.2.1	M	M	M	
3.2.2	M	M	M	
3.2.3	M	X	M	V8.6: Amalgamated into 3.2.1; v8.7: new, transfer fee (Reg 10)
3.3.1	M	M	M	
3.3.2	M	M	X	3.3.1 + 2 amalgamated
3.4	M	M	C	Critical in 8.7 (upgraded: keeping passports)
3.5.1	Co	Co	Co	Reduced to one item on complaints and harassment. Eq Ops policy need dropped .
3.5.2	Co	Co	X	
3.5.3	Co	Co	X	
3.5.4	Co	Co	X	

3.6.1	R	R	R	
3.6.2	Co	Co	Co	
3.6.3	R	X	X	removed
4.1	M	M	M	
4.2	M	M	M	
4.3	M	M	C	Critical 8.7 Accommodation. 4.3 and 4.4 amalgamated
4.4	M	M	X	
5.1	M	M	M	Reworded 8.7
5.2	M	M	M	
6.1.1	M	M	M	Comment expanded to include recruitment agencies' vans
6.1.2	Co	Co	Co	
6.1.3	Co	Co	X	Amalgamated 6.1.2
6.2.1	M	M	M	6.2.1+2 amalgamated (8.7)
6.2.2	M	M	R	
6.2.3	Co	R	X	Revision of marking
6.3.1	C	C	M	Reworded 8.7 "LP allowing workers to work in conditions..."
6.3.2	R	R	M	Redrafted (8.7) 6.3: 4 paras to 2, major
6.3.3	R	R	X	-
6.3.4	R	Co	X	-
6.3.5	Co	X	X	Section Condensed and reworded
6.4.1	C	C	M	Reduced. Correct critical in 6.4.2
6.4.2	M	M	C	8.7 Critical: state of vehicles used to transport workers
6.4.3	R	R	R	
6.4.4	R	R	R	Revised foreign references deleted (ALP)
6.4.5	R	R	M	
7.1.1	C	Co	R	Critical reviewed; 8.7 reworded
7.1.2	R	R	Co	7.1.1+2 Combined; original 7.1 to Comment section
7.1.3	Co	Co	X	
7.2.1	M	M	M	7.2.1 Rewrite (REC)
7.2.2	Co	Co	Co	
7.2.3	Co	Co	Co	
7.2.4	Co	Co	Co	
8.1	M	M	M	
8.2	M	M	M	
8.3	Co	Co	Co	
8.4	C	X	X	Section 8 Condensed. Critical removed
8.5	Co	X	X	
9.1.1	M	M	M	9.1 section reduced to 3
9.1.2	Co	Co	M	
9.1.3	M	M	Co	9.1.1 Considered duplicate (8.7)
9.1.4	Co	Co	X	9.1 redrafted: original 9.1.4 moved to 9.1.3 etc
9.1.5	Co	X	X	Section Condensed
9.2.1	M	M	M	V 8.7 redrafted
9.2.2	Co	Co	Co	

9.2.3	C	M	M	
9.2.4	R	R	R	
9.2.5	R	R	X	Included in 9.2.1
10.1.1	M	M	C	Reworded (home Office) 8.7; critical 8.7 legality of workers
10.1.2	R	R	R	
TOTALS	73	65	54	

Abbreviations: C=Critical; M = Major; R=Reportable; Co=Correctable; [X=discontinued]

Notes:

App 2: Summary of main changes in v 8.7

- Markings for categories now Critical, Major, Reportable, Correctable
- Formatting, layout and numbering improved
- Intro, Inspections Visits, Non-Compliance updated
- Criticals now: 1.1 (licence), 3.1 (mistreatment) 3.4 (passports retained), 4.3 (accommodation), 6.4.2 (LP Vehicles), 8.1 (sub-contracting),
- 3.5 Redrafted (harassment, abuse)
- 5.1 amended
- 6.1 redrafted – more LP oriented
- 6.2.1 +2 combined – H&S training
- 6.3 1-4 reduced to 2 (safe place work)
- 6.4.4 remove list for foreign drivers
- 7.1 simplified and reordered
- 7.1.1 removed to comment
- 7.1.2 + 3 changed to 1 + 2 one correctable
- 7.2.2 Major (was 7.4) Changes of contract without consent
- 8.1 Major to Critical (Unlicensed subcontractors)
- 9.1.1 removed (duplicate) 9.1.2+3 become 1+2 Major
- 9.1.2 deleted (immigration – see s10)
- 9.1.3 deleted
- 9.2.5 deleted, included in 9.2.1
- App2 Conduct Regulations