



Annex A - GLA10/7.3

HSE – Developed options for GLA merger

26 April 2006

Options for merger of Gangmaster Licensing Authority and its Board

Background

The Hampton Review report “ Reducing administrative burdens: effective inspection and enforcement“ published in March 2005 recommended that thirty-one national regulatory bodies be consolidated into seven thematic regulators: one of which being an enhanced Health and Safety Executive (HSE). As part of this enhanced role it proposed that the Gangmaster Licensing Authority (GLA) together with a number of other currently independent licensing authorities be merged with HSE within the next two to four years.

In the Budget statement to the House on 16 March 2005, the Chancellor of the Exchequer confirmed that the Government had adopted the recommendations in full, including the merger of the specified agencies into an enhanced and expanded HSE and would legislate for their implementation. It is proposed the recommendations be implemented by way of Regulatory Reform Orders provided for by the Legislative and Regulatory Reform Bill currently before Parliament.

The Hampton Review

Philip Hampton was invited by the Chancellor in March 2004 to review regulatory inspection and enforcement with a view to reducing the administrative cost of regulation to the minimum consistent with maintaining the UK's excellent regulatory outcomes. The review involved numerous stakeholders including regulators, business and local government and concluded that whilst there was much good practice in UK regulation, the system, as a whole, was complicated and that good practice was not uniform. Overlaps in regulators' activities resulted in too many forms, too many duplicate information requests and multiple inspections of businesses.

It proposed entrenching the principle of risk assessment throughout the regulatory system, so that the burden of enforcement falls most on highest-risk businesses and least on those with the best records of compliance. In considering how to tackle the problems in the UK's regulatory system, the review set out a number of principles for regulatory enforcement, which are set out at Annex 1.

Additionally, amongst other things, it recommended reducing the number of regulators with which businesses have to deal.

Hampton Recommendations

In developing proposals for a streamlined central regulatory structure, the review argued they should be consolidated around key regulatory themes; one of which would be health and safety.

Of particular relevance to the GLA, in the development of that argument were:

- Section 4.52 – which concluded “that the Health and Safety Executive, whose remit extends to the safety of workers and the public in workplaces, should be expanded to cover other bodies with a similar remit, including aspects of public safety.”
- Section 4.53 – which stated “that the Health and Safety Executive should expand to take in:
 - The Adventure Activities Licensing Authority (currently funded by the Department for Education and Skills, but with policy direction already from the HSE);
 - The soon to be established Gangmasters Licensing Authority;
 - The Engineering Inspectorate, part of the DTI, whose remit is the safety of overhead power lines; and
 - The inspection functions of the Coal Authority, six staff from the organisation whose remit is competence in mining operations.”

A decision as to the future of the Security Industry Authority was deferred for a further two years.

- Recommendation 28 - which stated “ that, over the next two to four years i.e. by the end of March 2009, 31 of the 63 national regulators should be consolidated into the following seven bodies:
 - an expanded Health and Safety Executive;
 - an expanded Food Standards Agency;
 - an expanded Environment Agency;
 - a new consumer and trading standards agency;
 - a new rural and countryside inspectorate (the new integrated agency);
 - a new animal health inspectorate; and
 - a new agricultural inspectorate.”

Action to date

The Hampton Report has been published for over a year and departments are actively seeking to implement the recommendations to a timetable set by the Chancellor. The recommended mergers need to be completed by the end of March 2009.

Merger plans have to be submitted to the Better Regulation Executive (BRE) in September 2006 for approval.

Work to implement the Hampton recommendations on the Adventures Activities Licensing Authority, the Coal Authority and the Engineering Inspectorate is on target for completion by October 2006. The GLA merger with HSE is scheduled for completion by 31 March 2009 (at the latest) and is being managed as a discrete project by officials from HSE, the GLA and the Department of Environment, Food and Rural Affairs (Defra).

Options for merger of the GLA and its Board with HSE

The remainder of this paper considers the structural options for the merger of the Board and the GLA within an enhanced HSE. The options are summarised in tabular form at Annex 2.

GLA Board Options

There are a number of options as to how the current Board's functions could be discharged post-merger. The issue is complicated by the fact that the 'Board' is a statutory body established by the Gangmaster Licensing Act 2004 and the Gangmaster (Licensing Authority) Regulations 2005. Its statutory role is to ensure that the Authority properly discharges its functions and complies with the requirements of the regulations. Any changes affecting the Board's existence, functions, structure, status and/or governance will require legislative changes

The following options are based on the presumption that ministerial responsibility for the GLA will transfer to DWP Ministers following the merger with HSE.

Options for the Board post-merger are that:

- (A) Its functions are transferred to the Commission, which would report to DWP ministers on the activities of the GLA with the Board becoming an Industry Advisory Committee (IAC) or similar body, reporting to the Commission.
- (B) Its functions are transferred to the Commission (as in option A) and the Board becomes a working group of the Agricultural IAC; and
- (C) Its functions are transferred to the Commission (as in options A and B). The Board is dissolved and HSE reports on the activities of the GLA to the Commission.

N.B. Ex-officio members would not remain as members of the Board or any subsequent structural arrangement under any of the options.

Discussion

Option A

The Board's role and functions would be assumed by the Commission. The industry stakeholders represented on the Board would be invited to form a new Industry Advisory Committee (IAC) to advise on issues relating to gangmasters/labour providers, gangworkers, and casual and temporary workers. Like other IACs, it would provide expert advice to the Commission, which would be responsible for determining future policy and direction, overseeing the work of the Authority and be accountable to Ministers.

Benefits

- The governance structure would be compatible with existing Commission/HSE arrangements;
- A clearly demonstrable merger of the structures;
- Would transfer the decision-making responsibilities to the Commission;

- Would remove parallel access to Ministers, minimising the potential for conflict between the Board, the Commission and Ministers; and
- Would retain a separate identity for the Board.

Risk

- The option would create a new IAC to tackle a single issue, which has particular (but not exclusive) impact in the agricultural sector when an Agriculture IAC (AIAC) has only recently been reconstituted and commenced work in April 2005. The AIAC has already identified priorities for the industry including that of casual, temporary and migrant working. Thus there would be a potential for duplication of effort between the respective IACs

Option B

Similar to Option A, but one in which the Board becomes a Project Group of the existing AIAC and assumes responsibility for the wider work of the existing Casual, Temporary and Migrant Workers Project Group.

Benefits

- As in Option A, it would integrate the Board within the Commission's/HSE's existing governance structure;
- Would remove the potential duplication and overlap between the two IACs;
- Would maximise delivery of the Hampton objectives and principles, whilst retaining a separate identity for the Board.

Risks

- Might threaten the cooperation, goodwill and engagement of industry stakeholders;
- Would not fit well with any extension of the licensing regime beyond agriculture.

Option C

The Board's role and functions are transferred to the Commission. The Board would be dissolved and HSE officials would assume responsibility for bringing policy advice to the Commission in the same way as they do with other areas of work.

Benefits

- Best illustrates the commitment to Hampton objectives and principles as a modern regulator;
- Maximises efficiency gains and potential synergies.

Risks

- Might threaten the cooperation, goodwill and engagement of industry stakeholders;
- Would eliminate a body that could act as a source of advice/sounding board for the Commission.

Options for the Authority

This section considers the options for the GLA post-merger.

The GLA currently operates from offices on the Defra estate in Nottingham. The existing HSE office in Nottingham is relocating in April 2006 and as part of that relocation, additional space has been negotiated to house the GLA post merger. Co-location with HSE gives rise to a number of options under which the GLA's functions and staff could be incorporated in HSE.

The following options assume that eventually, the GLA's stand-alone corporate services and functions are absorbed within existing HSE structures.

The options for the structure of the GLA post merger are that:

- (A) The GLA is merged with the other merger bodies in a separate stand-alone division within HSE e.g. a Non Major Hazards Licensing Division reporting to the Commission. The division would have independent management, reporting and enforcement processes and structures.
- (B) The GLA and its staff become a stand-alone division within HSE with its own reporting and management and enforcement structures and arrangements.
- (C) The GLA is absorbed within HSE as a division/unit with its own identity e.g. as a Gangmaster Licensing Unit which will issue the licences. Peripatetic Compliance/Enforcement Officers, working from home or based in HSE regional/local offices, would be managed independently by the HQ unit.
- (D) The GLA is merged within an existing HSE division e.g. Field Operations Division with its own identity for policy and strategic functions as well as responsibility for issuing the licences. Compliance/Enforcement Officers, working from home or based in HSE regional/ local offices, would come under local FOD management.
- (E) The GLA is completely merged within HSE's Policy Group/ Field Operations Directorate. Policy and strategic functions would be carried out by the combined Agriculture/Food Sector and Policy Branch with compliance/enforcement activities being carried out by appropriately trained and authorised FOD staff. Under this option the licensing regime could either be centralised or be devolved to regional offices to issue licences within their geographical areas of responsibility.

Discussion

Option A

The GLA would be merged with the other merger bodies in a separate, stand-alone division within HSE e.g. a Non Major Hazards Division reporting independently to HSE's Management Board. The division would have independent management, reporting and enforcement processes and structures.

Benefits

- Would discharge the obligation to merge the GLA with HSE;

- Minimal disruption to the workings of the GLA and its staff in the short-term.

Risks

- An interim but in the long-term probably unsustainable position;
- Would realise some but not many of the Hampton objectives, principles and potential benefits;
- Assumes a degree of compatibility with the other merger candidate organisations, which does not exist;
- In the short-to-medium term would require convergence with the other merger candidate authorities;
- Would pose considerable risk of disruption to effective delivery of the licensing regime.

Option B

The GLA would be transferred in its entirety into HSE as a separate entity/division with its own management and reporting systems, co-located within the new HSE Nottingham office. Peripatetic Compliance/Enforcement Officers would continue to be home based although they would be able to access HSE offices to use facilities and services e.g. PACE interview rooms etc.

Benefits

- A simple merger, under which all current staff and systems would be retained;
- No disruption to the emerging licensing regime;
- Limited changes required to primary and secondary legislation;
- Limited merger costs;
- Minimal disruption to GLA and HSE staff.

Risks

- Would not deliver the Hampton objectives, principles or benefits;
- Incompatible with existing HSE structures;
- There would be no efficiency gains from common use of central resources such as accommodation, HR, etc.
- Little or no integration/interaction with/from other parts of HSE.

Option C

The GLA would be incorporated into HSE by creating a new division or unit e.g. a Gangmaster Licensing Division. Its HQ functions would be co-located with HSE's Nottingham office. The licence regime would be managed by the unit, which would also be responsible for developing policy and strategy and for managing operational and enforcement activities. Peripatetic staff would continue to be based at home or in regional/local HSE offices and are managed by the unit.

Benefits

- A clearly identifiable, stand-alone resource;
- Limited changes required to primary legislation;
- Some efficiency gains from using shared accommodation, logistics etc.

Risks

- Incompatible with existing HSE structures;
- Possible disruption to the licensing regime during the transition;
- Limited delivery of Hampton objectives, principles and potential benefits;
- Some disruption to GLA staff.

Option D

The GLA would become part of an existing HSE division e.g. Field Operations Directorate but would remain an identifiable resource e.g. a Gangmaster Licensing Unit. Its HQ functions and the licensing regime would be co-located at HSE's Nottingham office. Peripatetic officers would continue to work from home or be based in the Field Operations Directorate's regional/local offices under local FOD management.

Benefits

- Broadly similar to an existing HSE model, the Asbestos Licensing Unit;
- Would be consistent with Hampton objectives and principles for inspection and enforcement;
- Would be some efficiencies from co-location and local management of peripatetic staff;
- An identifiable resource for planning and delivery.

Risks

- Changes required to primary and secondary legislation.
- Greater disruption to GLA staff than with option A – changes to management structures, reporting arrangements etc.

Option E

The GLA would be completely merged within existing HSE divisions and structures e.g. Policy Group and Field Operations Directorate. Under this model, the policy and strategic functions of the GLA could for example be absorbed into the combined Ag/Food Sector and Policy Branch with the compliance/enforcement functions being carried out by Field Operations Directorate staff. The licensing regime could be held and managed centrally or be devolved to regional/local offices to administer within their geographical areas.

Benefits

- Would fully deliver Hampton's objectives and principles;
- Would maximise the potential realisation of benefits and synergies.

Risks

- Substantive changes would be required to primary and secondary legislation;
- The work of the GLA's Compliance and Enforcement Officers is very different to that of HSE's core business and its frontline staff;

- Assimilation of the GLA's Compliance and Enforcement Officers would have significant implications for existing recruitment, training and development and authorisation procedures;
- Additional resources required to deliver compliance/enforcement work might impose a burden on HSE's existing frontline activities;
- Possible dilution of the resource directed to gangmasters. Staff may be re-directed to other HSE priorities;
- Devolution of the licensing regime might cause disruptions during start-up and transfer of functions;
- Implications for GLA staff currently in post;
- No identifiable resource for planning and monitoring of delivery.

Conclusions

Option A delivers few (if any) of the Hampton principles of better regulation, assumes levels of compatibility with the other merger candidate organisations that are almost certainly unjustified and in the medium term would be unsustainable.

Option B cannot be considered a long-term solution as it would neither fit well the Hampton objectives and principles nor would it deliver the outcomes expected by the BRE. The benefits of the option are outweighed by the risks. In this option the GLA would effectively remain as a separate entity within HSE.

Option C would partially deliver the Hampton objectives but there would be little integration with existing HSE structures and systems.

Option D is a familiar arrangement that has been tried and tested in the HSE's Asbestos Licensing Unit model, and which is known to be able to deliver a licensing regime that is both efficient and fit for purpose.

Option E would deliver the Hampton objectives and principles but with significant risks in the short-to-medium term. There might need to be several steps to implementing this model over a number of months or years and to minimise the potential disruption to the licensing regime.

Annex 1

Hampton Principles of Enforcement and Regulation

The principles proposed by the Hampton Report are:

1. Regulators, and the regulatory system as a whole, should use comprehensive risk assessment to concentrate resources on the areas that need them most.
2. Regulators should be accountable for the efficiency and effectiveness of their activities, while remaining independent in the decisions they take.
3. All regulations should be written so that they are easily understood. Easily implemented, and easily enforced and all interested parties should be consulted when they are being drafted.
4. No inspection should take place without reason.
5. Businesses should not have to give unnecessary information, nor give the same piece of information twice.
6. The businesses that persistently break regulations should be identified quickly, and face proportionate and meaningful sanctions.
7. Regulator should provide authoritative, accessible advice easily and cheaply.
8. When new policies are being developed, explicit consideration should be given to how they can be enforced using existing systems and data to minimise the administrative burden.
9. Regulators should be of the right size and scope, and no new regulator should be created where an existing one can do the work; and
10. Regulators should recognise that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection.

Annex 2

Summary Tables for Merger Options

BOARD		
Option	Description	Comments
A	Board's role and functions assumed by HSC. Board becomes de-facto single issue Industry Advisory Committee (IAC)?	
B	Board's role and functions assumed by HSC. Board becomes a working group to the Agricultural IAC + assumes responsibility for work of the Casual, Temporary and Migrant Working Project Group?	
C	Board's role and functions assumed by HSC. Some of the GLA Board representation injected into (A)IAC structure. HSE officials bring policy advice to HSC as with other areas of work?	Would need to review the IAC role and membership to ensure the structure is capable of delivering G(L)A 2004.

AUTHORITY		
Option	Description	Comments
A	Merger within a newly created Non Major Hazards Licensing Division	The merger candidates are too different for this to be viable
B	Transfers as separate stand alone Division – reporting to HSE's Management Board.	Would not be seen as delivering Hampton
C	A stand-alone GLA Division, which issues licences, sets policy, manages operational and enforcement functions.	
D	Merger within an existing HSE Division e.g.the Field Operations Directorate but retains a separate identity as a licensing unit responsible for strategy/policy e.g. similar to the Asbestos Licensing Unit. Operational functions managed by Field Operations Directorate. Corporate functions absorbed within HSE's existing Resources & Planning Directorate.	
E	Merged completely within HSE's Policy Group, Field Operations Directorate, + Resource Planning Directorate.	

