



Gangmasters &
Labour Abuse Authority

Building a new compliance strategy for the GLAA

December 2020

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1. Introduction

- 1.1. This consultation presents options for changing our current approach to inspections and compliance activity within the sectors the Gangmasters and Labour Abuse Authority (GLAA) regulates through its licensing scheme. This compliance activity is predominantly carried out by the GLAA's Investigating Officers, who sit within its regulation function. There are 12.2 full time equivalent Investigators who conduct all inspection activity. Our aim is to build a compliance strategy which will strengthen our approach to licensing in line with the GLAA's strategic objectives and prepare the organisation for the future as it becomes part of the new Single Enforcement Body.¹
- 1.2. Compliance activity comprises:
 - Inspections arising from licence applications, i.e. Application Inspections (AI);
 - When a licence-holder is the subject of an inspection triggered by a complaint or intelligence, i.e. a Compliance Inspection (CI);
 - Inspections resulting from a change of Principal Authority, i.e. the person who is responsible for the day to day management of the business (CPA); and
 - Inspections conducted when a business notifies the GLAA that is trading in the regulated sector following successful application for a licence, i.e. Compliance New Business (CNB).
- 1.3. Some activities, including the way that we administer the licensing scheme, our checking process and the decision-making process; which are carried out as part of the licensing process are not covered in this consultation as we are not proposing to make changes to them.
- 1.4. There are questions asked at various sections of the consultation, and you are invited to add comments to clarify your answers. All comments and suggestions are greatly appreciated, and it would be helpful if you could explain the reason for your responses. The GLAA would also like to receive information or evidence which supports your comment or suggestions. The closing date for responses is **Friday, 12 February 2021**. Partial impact assessments are available on the GLAA's website and will be updated at the end of the consultation process.

2. Background

- 2.1 In April 2020 the GLAA moved to a new structure which brigaded activities into new functional teams. All the GLAA's regulatory work is now managed in its regulation function, comprising its licensing and compliance teams. This reorganisation provided an opportunity to revisit the way that processes and activities are currently being carried out.

¹ <https://www.gov.uk/government/publications/labour-market-enforcement-strategy-2019-to-2020-government-response>

2.2 The GLAA is primarily concerned with:

- preventing worker exploitation and ensuring that the risk of worker exploitation is satisfactorily addressed;
- tackling tax evasion, health and safety, negligence, fraud, breaches of employment and other law/regulations (which may or may not have a direct impact on workers); and
- maintaining a credible licensing scheme, creating a level playing field and promoting growth.

2.3 We believe that options set out below may provide a more effective approach to licensing and could provide greater assurance that the GLAA's licensing scheme is credible and provides a level playing field for business. We have listened to feedback from those who understand the regulated sector and this has helped shape our thinking. In particular, in preparing for this consultation we ran a small number of workshops where we shared some of our initial thinking with some of our key partners and stakeholders. The views expressed at those meetings have helped us to gain a better understanding of how compliance activity is viewed by the sector, and how changes in our approach might impact businesses.

3. Options for Change

3.1. This section sets out those aspects of our current approach to compliance which the GLAA believes require change.

The Demand for Application Inspections

3.2 Over the past three years, almost two-thirds of GLAA's compliance inspections carried out on business premises (a physical inspection) have been conducted at the point of a licence application being made. This is before the applicant business has started trading in the regulated sector. Although GLAA procedures allow for desk-based inspections, during this period there has been an almost automatic physical inspection for new licence applications, with an average of over 90% of applications leading to physical inspection (in 2019 it was 95%). On average, 72% of those applying for a licence are granted one outright with this rising to 88% when licences granted with additional licensing conditions are included. Annex 1 gives an overview of inspection data.

3.3 In 2013, the GLAA issued a note to stakeholders (called a GLAA Brief)² which set out a new risk-based approach to determining if a physical inspection was required. In accordance with this, whether a physical application inspection is required is dependent on whether the profile of an applicant meets either mandatory criteria (when a physical inspection will always occur), or the discretionary criteria (when a physical inspection may occur). The default position is that the GLAA will physically inspect unless discretionary aspects exist, supported by other evidence, information and intelligence, which deem the site visit unnecessary. This approach was

² <https://www.gla.gov.uk/media/2352/gla-brief-issue-28-final.pdf>

introduced to ensure that the GLAA decided whether to inspect based on risk. (The GLAA criteria are set out in Annex 2.)

- 3.4 The current high level of application inspection activity is driven by our approach to discretionary inspections which has resulted in an inspection being required in most cases where an application for a licence has been made. This is because in most cases the GLAA has very little information about a new business and so the default position is to make a site visit.
- 3.5 Application inspections are prioritised over intelligence-based compliance inspections (inspections of existing licence holders) so that new businesses can move quickly into the sector. A current upturn in the number of licence applications has placed a further squeeze on available compliance resources. Annex 3 sets out a comparison of the rate of application inspections for the last three years. Anecdotal evidence points to the current buoyancy of the food production sector for the increase in applications combined with the availability of government business grants. We also know that some businesses failed to renew their licence this year and so were required to apply for a new one.

Virtual Application Inspections

- 3.6 During the coronavirus pandemic and subsequent restrictions, we have demonstrated that we can successfully operate a licence application process, including ID checks, without a physical inspection.³ The GLAA moved to conducting almost all of our application inspection activity by virtual methods, e.g. Skype or conference call. The inspections follow the same format as a face-to-face inspection as the Investigator checks the identity of the application and whether the applicant is fit and proper and will then check compliance against the other Licensing Standards.⁴ This has reduced the amount of travel required and allowed application inspections to continue to be prioritised so that businesses can be licensed promptly.
- 3.7 At our recent stakeholder workshops, we explored how application inspections were done prior to Covid-19 restrictions and how they have been carried out since restrictions were introduced. We asked workshop participants whether they felt there was a value to having a physical inspection of the business as part of the application process. There was a recognition in all the workshops that the value of physical application inspections varied and was often limited, as the business being inspected was not as yet operating in the regulated sector. Most participants felt that with limited resources and the change in how we have operated since Covid-19 restrictions were introduced, there was little merit in prioritising physical application inspections. That said, some felt that it was important for there to be a physical meeting between GLAA staff and potential licensees, as this established a relationship from the outset. Notwithstanding this, they also recognised that a lot can be achieved through a desk-based or virtual approach to application inspections. Most of the information collected at an application inspection is paper-based, e.g. policies and processes, payslips and contracts to demonstrate

³ <https://www.gla.gov.uk/our-impact/how-we-inspect-and-prosecute/>

⁴ <https://www.gla.gov.uk/media/5963/licensing-standards-october-2018-final-reprint-jan-2020.pdf>

competence and knowledge of a particular licensing standard. We believe that these can all be verified sufficiently through a desk-based or virtual check.

Question 1

Do you think that the granting of a GLAA licence should be automatic (on application) or should there continue to be a system for vetting licence applications?

Question 2

Do you think that the GLAA should continue to conduct most of its application inspections virtually?

Focusing Resources on Compliance Inspection

- 3.8 A key consideration for GLAA is how to make the best use of our limited compliance resources. As mentioned above, all our inspection work within the regulated sector is carried out by 12.2 FTE Compliance Investigators who respond to the demands created by either licence applications or in response to intelligence received. This does not allow for inspection work to be planned out over the year. If the compliance team were able to proactively manage their workload by focusing on compliance inspections, they would have the capacity to conduct more compliance inspections including those not initiated by adverse intelligence. This would help to spread the work evenly throughout the year in line with available resources. The next sections focus on different options for determining when a compliance inspection might be required.
- 3.9 At the workshops there was near universal support for prioritising resources for compliance inspections rather than physical application inspections. It was felt that this was a better tool for checking compliance as the business inspected was operating in the sector. A compliance inspection also provides a vehicle to seek the views of workers who may not have an awareness of what a compliant business should be doing or know how to report issues. Currently, compliance resources are prioritised for applications, which means there is limited data on compliance within the licensed sector. The GLAA believes that switching the balance of activity of its compliance resources to the inspection of licensed businesses would better support the GLAA's strategic objective of providing a level playing field for all businesses and provide us the necessary data.

Question 3

Do you think that the GLAA should focus its resources more on compliance inspections rather than application inspections?

Verifying Information to check Compliance

- 3.10 In our small-group workshops we also explored whether the GLAA could embody in its approach the collecting of information from applicants which had been verified by a third party such as an audit conducted for a retailer. Workshop participants explained the general approach to audits in the sector which require documentary

evidence such as a policy or process to be uploaded prior to the audit. Participants felt that this could be drawn upon in the GLAA's compliance regime to strengthen a desk-based application inspection. There was also general agreement that virtual ID checks are becoming the norm across most sectors.

- 3.11 The GLAA considers that there is scope for the process of verifying compliance with the Standards at the point of application to be contracted out. Recruitment businesses are regularly required by retailers and other business partners to undergo an audit of their practices. Many of these audit models are based on the GLAA Licensing Standards to assess compliance. The benefit of passing application verification work to a third party is that these businesses will already have the appropriate tools and expertise to deliver this work which would consequently free up GLAA resources to focus on compliance inspection work.

Question 4

Do you think the GLAA should explore whether application verification work could be contracted out to third parties?

Compliance Inspections on Renewal

- 3.12 We have considered whether compliance inspections should be scheduled at the point of licence renewal. This approach is used by other regulators such as the Social Housing Regulator to schedule inspection activity. Clearly, with over 1,000 licences the GLAA with its limited resources would not be able to inspect every business every year. However, if this option was adopted, a renewal inspection could be triggered randomly or because of information available at the time of renewal. For example, there may be Intelligence which indicates an inspection is required. Taking account of current levels of activity, it is estimated that around 20% of licence-holders could have a compliance inspection annually⁵, which would concentrate on if the business is operating in accordance with the licensing standards. The aim would be, over time, for all licence-holders to receive a compliance inspection with this process taking several years.
- 3.13 A variant of this option would be for compliance inspections to be triggered only at the point of renewal with this being the only trigger for such an inspection. Thus, the inspection would not be instigated immediately by any reported intelligence, although, if any complaint had been made, this would be dealt with at renewal. With this option there is a risk that serious non-compliances may not be dealt with for some time with businesses continuing to be non-compliant exposing workers to exploitation.
- 3.14 Workshop participants did not favour moving to a system where all licence holders would be inspected over several years through the renewal process. It was felt that this would be a bit too much like inspection for inspection's sake and might risk not identifying non-compliant businesses.

⁵ There are on average 1000 licence-holders so this would equate to 200 inspections.

Question 5

Do you think that the GLAA should adopt the option where compliance inspections would only be triggered by licence renewal?

Question 6

Do you think that all licence-holders should be inspected over a particular time period whether or not GLAA intelligence indicates a need for an inspection?

Randomised Compliance Inspections and Intelligence-led Inspections

- 3.15 Workshop participants identified a hybrid option for compliance inspections, which did not centre on the point of renewal. They felt that there should be a mixture of random inspections, as well as the usual intelligence-led ones. The reason for this was that some businesses may not be the subject of Intelligence reports, but that did not automatically guarantee compliance. Participants felt that if there was the potential for scrutiny at any time, this would keep businesses compliant as they would not know when an inspection might occur. Additionally, they thought that intelligence from workers may not always be reported and that a cycle of inspections would weed out unscrupulous labour providers. They believed that intelligence-led inspections should be prioritised and that there should be a mix between site visits and requests for evidence of compliance to be provided by the business depending on the intelligence reported.
- 3.16 Many workshop attendees suggested that the GLAA could make more use of third-party audit reports, for example, by making these a requirement of the renewal process. The basis for this was that such audits would be able to provide evidence of compliance as many of these are based on the licensing standards. Potentially this would be cost-neutral for the GLAA as many businesses are required by their supply chain to undergo audits such as SMETA. However, it needs to be recognised that smaller businesses may not be subjected to audits in the same way and this could potentially introduce a cost burden for those businesses.

Question 7

Do you think that a hybrid approach as explained above to triggering inspections would provide greater assurance on compliance?

Question 8

Do you think the GLAA should be looking to use evidence from third parties of compliance with the licensing standards to inform licence decisions?

Question 9

Please explain below any other options that you think the GLAA should consider.

New Business Inspections

- 3.17 Some concerns were raised by workshop attendees about the loss of GLAA’s “new business” inspections, (i.e. routine compliance inspections conducted once a newly licensed business begins to trade), if inspections were only random or intelligence-led. However, there was support for an approach that would involve local contact (awareness visits) being made by the GLAA’s operational enforcement syndicates and/or Compliance Investigators. This approach has been successfully used during the pandemic to provide information for labour users and licence-holders. Such engagement by the GLAA would not be the equivalent of a formal inspection, but would provide an opportunity for education and awareness raising and an opportunity to check if the business is operating in the regulated sector. This contact could be further enhanced by ensuring that the GLAA continues to use its communication channels such as “Briefs” and bulletins to share information.⁶

Question 10

Do you think that the GLAA should stop doing new business inspections and replace them with awareness visits?

Longer Licences and Earned Recognition

- 3.18 During the workshops the introduction of a regime of longer licences, i.e. a two-year licence for compliant businesses was explored. There was not much appetite by attendees for the introduction of longer licences. Additionally, workshop participants felt that some compliance activity would still be required at the mid-point of the longer licence period to ensure that the business remained compliant. There was also a view that as the GLAA currently collects a fee annually, it was unclear what the benefits would be of a longer licence to the GLAA or to licence holders. The GLAA could move to collecting renewal fees in line with the length of the licence and this would have the potential for reducing administrative burdens. However, businesses would be required to pay the higher renewal fee upfront and not split over each year. This would mean that there would be no financial benefit to a longer licence.
- 3.19 The concept of “Earned Recognition” was discussed in the context of licensees proving compliance at renewal by relying on third party audits. “Earned recognition” is used in regulation to refer to the process whereby compliance can be proved by providing an agreed form of evidence, e.g. completion of a qualification. If licence holders could provide, for example, details of an audit this could be used to determine if a longer licence could be awarded. This idea has been explored previously, but it was difficult to identify types of evidence to prove compliance. If third party audits were to be used, we would need to ensure that all businesses were able to take advantage of this option by providing a good selection of approved audits.

⁶ <https://www.gla.gov.uk/publications/glaa-brief-and-licensing-news-guidance-for-supplying-workers/>

Question 11

Do you think that if businesses were able to demonstrate that they are compliant with the licensing standards through a form of “Earned Recognition”, they should be able to pay for a longer licence?

Spot checks and Thematic Reviews

- 3.20 Workshop attendees strongly felt that licence-holders should be “kept on their toes” by spot checks or thematic reviews which could be desk-based or through physical visits. This approach could provide a snapshot of compliance in the sector. It was generally agreed that compliance activity did not just have to be an inspection but could encompass the present process for dealing with minor issues plus other requests for information. The GLAA currently deals with minor complaints by directly contacting the licence-holder and asking them to address the complaint. This is used, for example, when a worker feels their pay is incorrect. In most cases the licence holder will be asked to take such action as required to correct an under-payment or provide evidence as to why the action they took was correct. This way of handling such matters produces a quick and effective response to complaints. If the response is inadequate an inspection can be triggered.

Question 12

Do you think the GLAA should conduct more “spot checks” and/or thematic reviews and, if so, what do you think should trigger these?

The Scope of Licensing

- 3.21 One licensing issue that has previously been raised with the GLAA is the question of whether the GLAA should “expire”⁷ the licences of those businesses which are not actually supplying workers in the regulated sector. In the past a small number of businesses have applied for a licence as they recognise that a licence can be used to evidence compliance with employment law. Other businesses may apply for a licence in anticipation of winning a contract which does not then happen, but still choose to retain their licence. There are approximately 200 businesses that continue to be classed as a “New Business” as they have not notified the GLAA that they are operating in the regulated sector (such notification is a requirement under the terms of the licence).
- 3.22 It has been suggested that the GLAA should not allow businesses to renew their licence after 12 months if they are still classed as a “New Business”. The GLAA allows all businesses to renew their licence irrespective of the status of the business – provided they meet the prescribed standards. If the GLAA were to change its approach on this, guidance would be provided to businesses as to what action would be taken at renewal if they were still classed as a “new business”. While this would be likely to reduce the number of licence-holders, we would like to explore what the benefits would be for the regulated sector.

⁷ The GLAA could refuse to renew a Licence causing it to expire or revoke it prior to renewal.

- 3.23 More generally, there is concern about the GLAA licensing businesses who have never intended to directly supply labour in the regulated sector. These would include businesses who run a business model whereby they operate as a financial intermediary such as an umbrella company providing services and benefits to the worker and labour provider. These types of business will have a contract with the worker but may not be directly involved in arranging the supply to the labour user. In addition, there are some licence-holders who hold more than one licence which can be for valid reasons, e.g. to support the structure of their business. However, we are concerned that this practice of having more than one licence can be exploited by some businesses to provide a back-up if they think their licence may be at risk. In both cases the licence is being issued for purposes other than the direct supply of labour into the regulated sector. While we recognise that demonstrating 'intent' is clearly somewhat subjective, we are seeking views on the principle of this being possible under the current regime.

Question 13

Do you think there are benefits to the regulated sector of expiring the licences of businesses which are not operating in the regulated sector after 12 months?

Question 14

Do you think that the GLAA should refuse to licence businesses where it judges they do not intend to directly supply workers into the regulated sector?

Question 15

Do you think there should be a limit on the number of licences that a business can hold to obviate the risk of a "life-boat" licence being granted?

Licence Fees

- 3.24 While this consultation is entirely focussed on how the GLAA undertakes its compliance activity, there are some potential implications for the current licence fee structure, depending on which options are chosen. The GLAA has not revised its fees in over a decade and is currently under-recovering its costs by around 50% despite full cost-recovery being a requirement set out in HM Treasury's Managing Public Money. And while the GLAA has not formally reviewed its fee structure, there are some clear ambiguities around how the fees were originally set in relation to the turnover of licensed businesses. All of this suggests that the GLAA should undertake a full review of its fees, even if the outcomes are not implemented by the GLAA and are instead used to inform thinking around fees by the new Single Enforcement Body.

Question 16

Do you think that once the GLAA has completed its review of compliance activity it should then review its licence fee structure and subject the outcomes of that review to formal consultation?

4. How to Respond

- 4.1. The consultation period began on Friday 18 December 2020 and will run until Friday, 12 February 2021. Please ensure your response reaches us by that date. A copy of this consultation document will be sent to all Licence-holders and stakeholders and a copy will be placed on the website.
- 4.2. Please send your response to: consultation@gla.gov.uk
- 4.3. The GLAA will also be holding a number of webinars and other stakeholder events with question and answer sessions to explore the proposals. Information on these will be sent to all licence holders and stakeholders in due course.
- 4.4. A list of all the questions is set out at Annex 4.

5. Confidentiality and Data Protection

- 5.1. Responses provided will be published in a summary of responses to this consultation. Please state clearly if you want your name or response to be kept confidential. Confidential responses will be included in any statistical summary of numbers of comments received and views expressed.
- 5.2. Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the Freedom of Information Act 2000 (“FOIA”) or the Data Protection Act 2018 (“DPA”). If you want information, including personal data, that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. Please explain why you regard any of the information you provide as confidential. If we receive a request for disclosure of the information, we will take account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system is not considered binding on the GLAA.

6. Summary of Responses

- 6.1. A summary of responses will be published on the GLAA website following the end of the consultation exercise.

7. Next Steps

- 7.1. We intend to implement any changes by April 2021, subject to a decision by the GLAA Board.

8. Complaints

- 8.1. If you are unhappy with how this consultation is being conducted, please write to: complaints@gla.gov.uk

Inspection Data Analysis

Table 1. Applications (average across 2017/18 to 2019/20) by fee band.⁸

	A	B	C	D	ALL
Number of new applications (fees cleared)	2	1	16	117	136
Number of applications withdrawn (post fee)	0	0.3	1.0	4.3	5.7
Number of applications refused without inspection	0	0	0	0.33	0.33
Number of licences granted (in full or with ALCs) without inspection	0	0	1	7	8
Number of application inspections triggered in year	2	2	14	106	124
Number of licences granted outright (without ALCs) post-inspection	1.0	0.7	8.3	80.3	90.3
Number of licences granted with ALCs post-inspection	0.3	0.3	2.3	17.0	20.0
Number of applications refused post-inspection	0.0	0.3	1.3	13.3	15.0
Number of refused applications appealed	0.0	0.0	0.7	2.3	3.0
Number of appeals dismissed (not upheld) or pre-appeal rejected	0.0	0.0	0.7	2.3	3.0

Table 2 - Compliance Inspections 2019/20

Compliance Cases Tasked	
2018-19	2019-20
222	213

These figures comprise all the work allocated to the compliance team and includes: application inspections, compliance inspections, compliance new business inspections and change of PA.

32 (non-AI) compliance inspections were tasked and closed in 2019/20.

187 compliance cases in total were finalised in 2019/20 of which **67** were CI's, CNB's and CPA's and the remainder AIs.

The data on compliance inspections is presented in a different format as the lower numbers mean analysis by fee band is less meaningful. These data are taken from the GLAA's annual end of year performance report.⁹

⁸ <https://www.gla.gov.uk/i-am-a/i-supply-workers/do-i-need-a-glaa-licence/how-much-does-it-cost/>

⁹ <https://www.gla.gov.uk/media/5781/public-facing-glaa-2019-20-end-of-year-performance-report.pdf>

GLAA Approach to Discretionary Inspection

Physical inspection	No Physical Inspection
Previously refused or revoked licence holder or someone previously linked to that business.	Where paragraphs 5.8 and / or 5.9 of the Licensing Standards apply and it is proportionate to refuse without a physical inspection.
Adverse intelligence or information from other government departments.	Where clear evidence of current or recent non-compliance and / or criminality exists on which to consider refusal without inspection.
Where insufficient information is held on the business or individuals.	Where a new legal entity is set up for business reasons accepted as legitimate by a licence holder where no adverse intelligence is held. A licence may be granted.
	If there is a justifiable reason to make a decision to grant or refuse a licence without a physical inspection.

Application Inspection Tasked by Calendar Year

Year	Number of Application Inspections
2018	90
2019	91
2020*	131

*inspections tasked this year as of 15/12/20

List of Consultation Questions

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