



Department
for Environment
Food & Rural Affairs

www.gov.uk/defra

Gangmasters Licensing Authority

Response to the consultation on the government's proposed changes to the scope and governance of the Gangmasters Licensing Authority

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Consultation process

The Defra consultation on legislative changes to the operations of the Gangmasters Licensing Authority ran for eight weeks from 26 April and closed on June 21. One hundred responses were received. Some two thirds of these were from forestry stakeholders supporting the exclusion of the sector from licensing.

As well as publication of the consultation documents in the online survey a stakeholder workshop was convened attended by representatives from key stakeholders including many of the organisations currently represented on the GLA Board.

Background

The Gangmasters (Licensing) Act 2004 (the Act) provides for a licensing scheme to regulate the supply of labour to the farming, food processing and shellfish gathering sectors and establishes a non-departmental public body, the Gangmasters Licensing Authority (GLA), to administer the scheme.

Regulations made under the Act regulate how the GLA operates internally and define the scope and operation of its licensing and enforcement powers. The Act defines the sectors for which a labour provider is obliged to obtain a gangmasters licence prior to commencing the supply of workers. Regulations produced in 2006 and 2010 reduced the scope of licensing arrangements, removing the supply of workers for some activities from the need to be covered a licence because they were considered to pose a low risk of exploitation.

Government is committed to protecting vulnerable workers from exploitation by unscrupulous gangmasters. The Government also wants to provide an environment for all sectors of the economy in which private enterprise and businesses can flourish. To this end Government wishes to remove unnecessary red tape and administrative burden.

The cross-Government review (known as the Red Tape Challenge) of all regulatory law including employment-related law considered the regulations governing GLA operations. The outcome of this review saw a number of measures aimed at reducing burdens on business by simplifying regulatory legislation and giving employers the flexibility to run their business effectively and have the confidence to take on staff and grow.

The review of the operation of the GLA licensing scheme, undertaken as part of the Red Tape Challenge during the autumn of 2011, concluded that the most vulnerable workers in the regulated sectors should continue to receive the protection offered by the licensing regime. However, the review recognised that the circumstances of supply of workers in some areas covered by licensing pose no serious risk of exploitation.

The review recommended reducing the burdens on compliant businesses, whilst at the same time focussing more closely on the gross abuse of workers with an increased commitment to tackling any unscrupulous gangmasters committing crimes including tax evasion, trafficking, health and safety negligence and other serious crimes.

The purpose of this consultation was to seek views on the Government's plans to change underpinning legislation to amend the scope of GLA licensing, to change the size and structure of the GLA Board and to explore ideas for alternative sanctions that the GLA might use to tackle transgressions in this area.

Separately from this Defra consultation the GLA have carried out a consultation on the administration of their licensing arrangements. That consultation set out proposals for change in the following areas: the application inspection process, earned recognition, license renewal process and changes to the public register and active check process. Details of that consultation can be found on the GLA website: <http://gla.defra.gov.uk/>

Responses received: a summary

Overall there was an acknowledgement of the need to lift unnecessary burdens on business by removing low risk sectors from licensing and strong support for excluding forestry.

The supply of labour for shellfish cultivation will be excluded from licensing. This applies to businesses which have an exclusive right to manage and harvest shellfish on a particular stretch of the coastline. This is **not** a blanket exemption from licensing for anybody supplying workers to gather shellfish. So a gangmaster supplying labour to gather wild shellfish from public coastal areas, as was the case with the workers who tragically died in Morecambe Bay in 2004 before the GLA was established, will continue to require a license. Businesses benefiting from this exclusion will continue to be obliged under the law to obtain temporary and non-specialist permanent workers through a licensed gangmaster.

Generally there was acceptance that the Board should be reformed into a smaller body better able to provide strategic direction for the GLA. A few were against any changes to the size and structure of the Board. The need to retain strong engagement with stakeholders in the regulated sectors was stressed.

Some expressed scepticism that the proposed civil sanction as an alternative to prosecution (Enforcement Undertakings) would add much to the existing powers of the GLA but some said that this was worth exploring further.

Summary of responses for each question

Question 1: Do you agree that the sectors listed in Chapter 4 are sectors where the risk to workers of exploitation is low and can safely be excluded from the scope of GLA licensing?

Most acknowledged the need to reduce unnecessary burdens on business and to release Gangmaster Licensing Authority resources from regulating low risk areas to use on detecting and tackling serious abuses of workers.

Some consultees were opposed to any exclusions on the grounds that they favoured an extension of the GLA's remit into more areas, for example the construction industry, rather than any reductions. Extending the remit of the GLA into other industries was not proposed and is out of scope of this consultation.

Individual organisations sought clarity over which sectors and activities would still require licensing and where licenses would no longer be required.

In summary the proposed exclusions are:

An exclusion will permit **Apprenticeship Training Agencies (ATA)** to share and supply apprentices without the need for a licence. An organisation will benefit from the exclusion from licensing if it is either an ATA recognised by the Skills Funding Agency; or registered with the National Apprenticeship Service as an "ATA in Development"; and supplies workers, enrolled in an apprenticeship operated according to a framework issued by the designated issuing authority. This is not a blanket exemption from licensing for anybody supplying apprentices

Shellfish Cultivation: an exclusion to permit shellfish cultivators to use workers to gather shellfish. This applies to businesses which have an exclusive right to manage and harvest shellfish on a particular stretch of the coastline. This is not a blanket exemption from licensing for anybody supplying workers to gather shellfish. So a gangmaster supplying labour to gather wild shellfish from coastal areas, as was the case with the workers who tragically died in Morecambe Bay in 2004, will continue to require a license.

This exclusion will also cover the use of labour for the processing and packaging of shellfish gathered under exclusive rights and the use of labour by businesses operating shellfish hatcheries.

Cleaning: The inclusion of a note in the Regulations making it clear that the daily cleaning and maintenance of machinery used to process or package food falls within the scope of the 2004 Act.

Land Agents: A land agent is currently viewed as the final link in a supply chain ending with their client as the labour or service user. As a consequence, a land agent operating without a GLA licence risks prosecution. The contractual relationship between the land agent and their client is qualitatively different from that between a land owner and a contractor or labour provider. Their principal interest is in land management and their involvement in activity which is licensable is incidental to this. It is in this context that we conclude that the activities of land agents be excluded from the scope of the licensing scheme without posing a greater risk to workers. As with the exclusion for shellfish cultivation anyone supplying workers or services to a landowner via a land agent will need to hold a valid gangmasters licence where appropriate.

Volunteers: an exclusion for the use of volunteer workers by charitable and civil society organisations. This would remove a current risk of non-compliance with the regulatory framework. For example where a community or civil society organisation proposed to manage an area for its environmental value and organised volunteers to carry out conservation projects such work would often be subject to licensing at present. Clearly, the cost to such groups of obtaining a licence even at the lowest price band would be prohibitive and it was not intended that such activities should fall within scope of the licensing scheme when the 2004 Act was passed.

Public and Quasi Public bodies (including Govt Depts, agencies, NDPBs and private and voluntary sector partner organisations): an exclusion for organisations which deliver schemes to reintroduce the unemployed back into work on behalf of Government and its agencies. The supply of workers undertaking work experience in connection with return to work programmes outside the GLA regulated sectors already benefits from special arrangements where any business is contracted to the Jobcentre Plus, the Department of Work and Pensions or any government body. Similar arrangements should be introduced for organisations operating in the GLA sectors.

Forestry: an exclusion for those supplying and using workers to undertake commercial, amenity and conservation forestry work. This follows recommendations in the Forestry Regulation Task Force. The Task Force concluded that there was little evidence of exploitation of forestry workers and the sector could safely be removed from the scope of licensing. Separately, from August 2011 the GLA introduced a 'lighter touch' in the forestry industry to test a new approach to regulation, which included removing the requirement for an application inspection in all cases. This approach has worked well with no problems arising.

Raising crops and livestock as a service to a third party: an exclusion for farmers who enter into arrangements with a third party to raise agricultural crops and livestock where ownership of the crops and stock raised remains with the third party.

The GLA has found that the requirement to obtain a licence has had an unintended impact for some businesses. The businesses concerned may best be described as contract farmers who grow crops or raise livestock on behalf of a third party. Under such contracts, all seed or young livestock are supplied by the customer/client and remain the property of the customer/client. The farmer would be responsible for

raising the crop or livestock to a marketable condition for which they would be paid a fee. Workers used in the provision of these services will either be direct employees of the farmer concerned, or will be temporary workers who must be sourced from an already licensed provider. As a consequence, the risk of worker exploitation is significantly reduced to the extent that these arrangements should be excluded from the scope of licensing.

In introducing these exclusions the GLA will monitor intelligence from sectors where the need for a license has been removed. If evidence of systematic or widespread abuse is found the GLA, in collaboration with Defra, will assess the need to re-introduce licensing requirements which could be effected quickly through secondary legislation.

Question 2: Are there other sectors with a low risk of worker exploitation that you think should be excluded from the scope of GLA licensing? What is the evidence for this?

With the exception of the extension of the exclusion for shellfish cultivation into the processing and packaging of those shellfish no proposals supported by compelling evidence were received to support exclusion of additional sectors or activities from licensing.

Question 3: Do you agree that the size and the system for GLA Board appointments should be amended to bring them more into line with best practice in other similar bodies?

Most consultees that offered a view agreed that the current Board of 28 was too large. Generally there was acceptance that the Board be reformed into a smaller body better able to provide strategic direction for the GLA and in line with best practice in other public bodies.

Some consultees opposed any restructuring of the Board and felt that the current arrangements provided effective direction for the GLA.

Question 4: What mechanisms would you favour to ensure that a smaller GLA Board had access to and took account of a wide range of stakeholder knowledge and viewpoints?

Many stressed the importance of keeping strong engagement with stakeholders; this could be secured by developing the current system of liaison groups, with a smaller Board having a requirement to have regard to recommendations from a set of liaison groups.

Question 5: Do you agree or disagree that the GLA should have access to the Enforcement Undertakings civil sanction in addition to their current powers to address breaches of the law? What is the evidence to support your answer?

Most consultees that offered a view expressed doubts that the suggested power, Enforcement Undertakings, would be a positive addition to the GLA's enforcement powers. Many expressed disappointment that monetary penalties were excluded from consideration.

The consultation document was explicit in excluding monetary penalties from the proposals. This is because Government policy clearly precludes the use of monetary penalties against small and medium sized enterprises (SME); the overwhelming majority of licensed gangmasters fall into this SME category. Thus, calls for use of monetary penalties are out of scope of this consultation.

A few consultees welcomed the idea of Enforcement Undertakings and could see that they might offer a valuable addition to the GLA's powers.

Question 6: If you agree, do you have a view on how the GLA might implement the Enforcement Undertakings civil sanction?

A few consultees who felt that Enforcement Undertakings might offer a valuable addition to the GLA's powers suggested that the idea of exploring the experience of the Environment Agency who have made extensive use of Enforcement Undertakings.

Next Steps

The responses submitted have been considered and where possible taken into account. A statutory instrument to implement the exclusions from licensing will be presented to Parliament to come into force from 1 October 2013. Proposals for a reformed Board structure taken account of views expressed will be drawn up. These will be presented as a statutory instrument to Parliament in the autumn of 2013 with an expectation that they will come into force in April 2014.

Further exploration with the GLA and Environment Agency on the use of Enforcement Undertakings will go ahead. Proposals on the circumstances when Enforcement Undertakings will be used must be subject to a further public consultation. That is expected to come forward early in 2014.