

A review supported by the
Better Regulation Executive
and National Audit Office

Gangmasters Licensing Authority:

A Hampton Implementation Review Report

Foreword

Philip Hampton's report: Reducing administrative burdens: effective inspection and enforcement, published in 2005, is one of the cornerstones of the government's better regulation agenda. The principles of effective inspection and enforcement set out in the report, putting risk assessment at the heart of regulatory activity, are designed to encourage a modern regulatory system which properly balances protection and prosperity. Since 2005, the Government has established an expectation that regulators will embed these principles in their approach to regulation.

In November 2006, the Chancellor of the Exchequer invited the National Audit Office and the Better Regulation Executive to develop a process of external review to assess how much progress regulators had made in implementing the principles of Hampton.

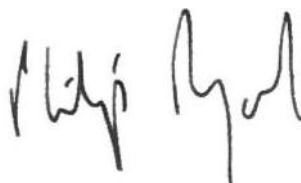
"Hampton Implementation Reports" covering the work of five major regulators were published in March 2008. The review process is continuing. At this point in the cycle we are publishing the results of reviews of two regulators, each of which has a significant impact on its specific economic sector. Together, the Security Industry Authority and Gangmasters Licensing Authority cover a wide range of economic activity, and work to protect our interests. How they carry out their regulatory activities matters.

Full implementation of Philip Hampton's recommendations is a journey that could take several years. This review is a 'snapshot' in time of the progress of each regulator towards his vision.

Each of the reviews found examples of innovation and initiative by regulators who continue to move the regulatory agenda forward, as well as areas for further improvement.

The assessments were carried out by teams of reviewers with wide ranging experience and expertise in the field of regulation. Talking to a wide range of stakeholders, to staff at all levels within the regulator's organisation, through visits to business sites and analysis of data and papers, the review teams have reached the findings and conclusions set out in these reports. The reports reflect the judgement of these review teams on the basis of the evidence put before them.

We would like to thank all of those who have continued to make these reviews a success. In particular, we are grateful to the regulators and their staff for providing support and making evidence available to the review teams, and to all the organisations that generously gave their time to offer evidence to the reviews. Finally, we are extremely grateful to all our reviewers, and their employers, for their involvement, enthusiasm and commitment to this project.



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Summary and conclusions

This review is part of a series of reviews of regulatory bodies undertaken at the invitation of HM Treasury and focusing on the assessment of regulatory performance against the Hampton principles and Macrory characteristics of effective inspection and enforcement. It was carried out by a team drawn from the Better Regulation Executive (BRE), the National Audit Office (NAO), Animal Health, and Consumer Focus, supported by staff from the BRE (see Appendix 1 for Review Team membership).

The Hampton Report¹, published in 2005, is one of the cornerstones of the government's better regulation agenda and regulators have been working since then to embed his principles in their approach to regulation. This review process is designed to identify where a regulator is on the road to full implementation and the issues each needs to address to become 'Hampton-compliant'.

The Review Team is grateful to the Gangmasters Licensing Authority (GLA) for its openness and support during the review period. Staff working at every level in the GLA were very open to the review process and were generous with their time, experience and expertise. We are also grateful for the contribution of the GLA's stakeholders for their helpful insights into the nature of the industries and the wider contexts within which the GLA operates.

What we found

The Review Team concluded that in many of the areas under review, the GLA has followed a good standard of Hampton-compliant regulation. The Review Team identified a number of areas where there is room for improvement, particularly concerning the clarity of procedures around its licensing decisions.

The GLA is a relatively new body, and it has been responsible for implementing a licensing scheme for labour providers in various food sectors. Its leaders emphasise that now that the licensing scheme is well established, it is entering a phase of operations where its strategic emphasis will focus less on bringing the majority of well-meaning businesses into a higher level of compliance, and more on tackling serious cases of non-compliance, particularly by those labour providers that currently operate outside the licensing system altogether. This will entail reorienting its work towards the areas of highest risk. If these plans are successfully implemented, the GLA will be in a strong position to demonstrate Hampton compliance to a high standard.

- The GLA's impact in improving working conditions for some vulnerable workers has been impressive, particularly in view of its relatively small size.
- The GLA is honest about cases where regulation has yet to have had an impact, and is starting to prioritise its work accordingly.
- The GLA is a learning organisation, and has been unusually open to constructive external challenge in its first years of operation.
- The GLA has done well in building consensus amongst its diverse stakeholders on the best way forward with regulation.
- The GLA has a good awareness of the likely unintended consequences of its operational decisions and takes proactive steps to mitigate these.
- The GLA has actively sought to minimise any unnecessary additional regulatory burdens that might have followed from its licensing regime.

¹ Reducing administrative burdens: effective inspection and enforcement, Philip Hampton, HM Treasury, March 2005

Issues for follow-up

The following table sets out the key issues that the Review Team believes the GLA needs to address to meet the Hampton criteria more

fully, measured against some of the symptoms² we were looking for to provide evidence of Hampton compliance.

Issue to be addressed	Hampton symptom
<p>A clearer focus on strategic outcomes</p> <p>The Review Team was impressed by the consistency of understanding and commitment that GLA staff brought to securing the GLA's key outcomes, and with the GLA's understanding of the wider context within which it operates. However, we found that this was not at present translated into a clear strategy, nor into a set of outcome measures for inclusion in its corporate documentation.</p> <p>The GLA is working to improve its strategic tasking (see page 8 below) with a view to more effective enforcement against the most significant risks confronting it. The Review Team welcomes this.</p> <p>As this is taken forward, more could be done to give a clearer external picture of its work, and measures provided to serve as a basis for accountability against more outcome-focused targets.</p>	<ul style="list-style-type: none"> The regulator has clear outcome-focussed objectives and targets which relate to its statutory objectives / overall aims which are understood by its staff and stakeholders.
<p>The GLA's intelligence base could be enhanced by working with a wider range of partners</p> <p>The GLA is an intelligence-led operation and routinely prioritises use of its resources against underlying risks founded on intelligence. The GLA has limited front line resource however, and is dependent on information from its partners in tracking down those labour providers who deliberately seek to circumvent the law.</p> <p>It has developed strong working relationships with a number of partners including the police, HMRC and the Health and Safety Executive, but could explore other potential sources of intelligence from other regulators working within the various agricultural sectors.</p>	<ul style="list-style-type: none"> The regulator co-ordinates its work with other regulators operating in the same sector.

² From Hampton Implementation Reviews: Guidance for Review Teams, National Audit Office and Better Regulation Executive, May 2007

Issue to be addressed	Hampton symptom
<p>The GLA's intention to take more decisive enforcement action in serious cases should not be allowed to affect its work in support of compliant businesses</p> <p>The GLA is responsible for reducing worker exploitation, and is clear about the need to take decisive action where businesses deliberately flout the law.</p> <p>Since its formation, GLA field staff have developed expertise in the law and an understanding of the sector, which has been of real help to those businesses that are doing their best to comply. Strong relationships with compliant businesses will be critical in ensuring the GLA receives the right level of intelligence to act effectively against rogue businesses.</p> <p>As the GLA moves into a phase where its work is more clearly focused on enforcement, it will need to ensure that it does not lose the goodwill that its work in support of those operating conscientiously within the system has developed.</p>	<ul style="list-style-type: none"> • Alternatives to formal sanctions are considered on a risk basis.
<p>The GLA's decision-making processes in licensing cases needs to be clearer</p> <p>The licensing framework overseen by the GLA can be confusing and can seem inflexible from businesses' perspective. Some aspects of the system are opaque and the circumstances in which compliance officers will use discretion rather than adopt formal action are not fully clear to outsiders.</p> <p>We recommend that the GLA should develop a clear public statement of licensing policy, along the lines of its existing enforcement policy which sets out how decisions are made in cases that might result in prosecution.</p>	<ul style="list-style-type: none"> • There is transparency in the decision-making process.

Issue to be addressed	Hampton symptom
<p>The need for automatic inspections to accompany licence applications should be reviewed</p> <p>The Review Team found that the GLA conducts few routine inspections, except where new applications have been received for licences to operate as a labour provider in one of the regulated sectors. The requirement to inspect businesses in all such cases can be costly in resource terms, and yield less meaningful information than other inspections (for instance, if they are targeted at businesses without an established compliance record from operating in similar, but unregulated sectors).</p> <p>The GLA has kept this issue under review for some time, but the Review Team believes that a more differentiated approach should be introduced to allow for a clearer focus on the main risks involved. The Review Team were encouraged by the evidence that they saw that the GLA had already started work towards such an approach.</p>	<ul style="list-style-type: none"> • The regulator focuses its greatest inspection effort on businesses, where an explicit risk assessment shows that: <ul style="list-style-type: none"> – there is a likelihood of non-compliance by business; and – the potential impact of non-compliance is high.

Contents

	Page no
Foreword	3
Summary and conclusions	4
Issues for follow up	5
Introduction	9
The Hampton vision	12
Design of regulations	16
Advice and guidance	20
Data requests	23
Inspections	26
Sanctions	29
Focus on outcomes	34
Appendix 1	
Review Team membership	37
Appendix 2	
Key findings and conclusions of the Hampton and Macrory reports	38
Appendix 3	
Review scope and methodology	40

Introduction

- 1 This review of the Gangmasters Licensing Authority (GLA) aims to provide a structured check on performance against the principles and characteristics set out in the Hampton and Macrory reports (see Appendix 2). The team reviewed the GLA against a performance framework³ developed by the Better Regulation Executive and the NAO, which provides a guide for reviewers on the kind of evidence to look for and questions to consider. However, the process is not the same in scope or depth as a full value for money audit of economy, efficiency and effectiveness and the Review Team's conclusions are based on a combination of evidence and judgement. A brief description of the scope of the review and methods employed is at Appendix 3.
- 2 The GLA was established in April 2005, implementing the provisions of the Gangmasters (Licensing) Act 2004 which created it as a statutory body. The GLA's core remit is to regulate those who provide labour under contract to labour users, particularly in the food gathering and packaging industries.
- 3 Previously, there had been no specific legal regulation of labour provision in the food sector, despite periodic concerns about the standards followed by them. Options for legislation had been discussed and a Temporary Labour Working Group had been established including all major stakeholders with a view to establishing a voluntary system of self-regulation against a set of ethical standards. A private members bill had been introduced to create a legal framework: this gained support following the Morecambe Bay tragedy of February 2004, in which 23 illegal Chinese immigrants, who had been working as cockle pickers without adequate supervision, drowned.
- 4 The GLA is a Non-Departmental Public Body sponsored by the Department for the Environment, Food and Rural Affairs (Defra). The GLA's Chief Executive is Ian Livesey and its Chairman is Paul Whitehouse. The Board's composition and responsibilities are specified by the Gangmasters (Licensing Authority) Regulations 2005. The GLA Board is large, consisting of the Chairman, 17 representative members, nine ex-officio members and one official observer. Board members are nominated from organisations with an interest in the regulated sector, including labour providers, labour users and workers, as well as Government Departments with an interest in its work.
- 5 The GLA's total expenditure in 2007/08 was £3.27 million, of which £2 million was spent on staff costs. Total income was £3.3 million, of which £1.37 million derived from fees received from operators for licensing and inspection activities, and £1.9 million was received from Defra based on a service level agreement to provide enforcement services within Great Britain (though enforcement services for Northern Ireland are paid for separately by the Department of Agriculture and Rural Development of Northern Ireland).
- 6 In 2007/08 the GLA employed an average of 53 staff (up from 44 in 2006/07), of whom 33 work on operations (intelligence, compliance and enforcement), and five on licensing. The rest are divided among the Chief Executive's office (two), finance & corporate services (ten) and policy & communication (five).

³ Hampton Implementation Reviews: Guidance for Review Teams, National Audit Office and Better Regulation Executive, May 2007.

- 7** The GLA regulates those who supply labour or use workers to provide services in agriculture, forestry, horticulture, shellfish gathering, food processing and packaging.
- 8** Traditionally, the term “gangmaster” has had specific sectoral and regional connotations which do not correspond precisely with the GLA’s remit. The origins of the gangmaster ‘system’ are deep rooted and can be traced back to the early 19th century farming practices in eastern England (relevant legislation included the Agricultural Gangs Act 1867, which was designed to protect women and child workers involved in the system).
- 9** Many of the labour providers who are regulated by the GLA fall outside the categories traditionally identified as gangmasters, and the GLA’s remit extends to many generalist employment agencies that also recruit and supply staff to sectors that are not subject to licensing by the GLA, including for instance those who provide labour for the construction and social care sectors. Since the commencement of licensing it has licensed 1,734 labour providers who supply to an estimated 7,000 labour users. Due to changes in the market place, with, for example, some companies going into liquidation, and others having licences revoked, there are currently 1,214 licence holders (as at 23 June 2009).
- 10** The GLA is estimated to govern around ten per cent of the UK agency employment sector. The University of Sheffield’s Evaluation Study of the GLA estimated in 2007⁴ that approximately 300,000 – 450,000 workers in the agriculture sectors regulated by the GLA were supplied through relevant labour providers, representing an annual value of £2.5 billion.
- 11** The businesses involved are diverse both in terms of their size and of their business models. The shellfish industry, for instance (where relatively few licences have to date been issued) is geographically distinct, and has very few direct links with labour provision in agriculture.
- 12** The GLA’s best estimate is that the total number of licensed labour providers represents about 75 per cent of the population who should, by law, be licensed. It is estimated that some 300 labour providers still operate outside the licensing regime.
- 13** Indirectly, the GLA also regulates the way in which labour users, who hire labour from licensees, carry out their work: it is an offence for them to hire from unlicensed labour providers within the relevant sectors. Most of these labour users are small businesses, who directly or indirectly, supply food to retailers.
- 14** The GLA’s economic impact is extended by the sector’s significance in the food supply chain: for instance, vegetables that are supplied to the UK retail sector are commonly harvested and packaged in the UK by labour providers subject to GLA regulations. The sectors that the GLA engages with are seen by some commentators as some of the toughest and most fiercely competitive in the UK, with tight profit margins and consequently intense pressures for efficiency savings. Its existence reflects the risks that these pressures can result in employment

⁴ The Evaluation Studies are available online at <http://www.gla.gov.uk/index.asp?id=1013265>.

practices where the welfare of workers or tax revenue can be prejudiced in an attempt to gain competitive advantage.

- 15** The GLA's mission statement is to "safeguard the welfare and interests of workers whilst ensuring labour providers operate within the law".

The Hampton vision

16 Both the Hampton and Macrory reports are concerned with effective regulation – achieving regulatory outcomes in a way that minimises the burdens imposed on business. Key to this is the notion that regulators should be risk-based and proportionate in their decision-making, transparent and accountable for their actions and should recognise their role in encouraging economic progress.

Risk-based

17 The GLA was created to tackle a number of risks in a sector where, historically, investigative and enforcement action had been neglected. The most significant of these risks are that the pressures on labour providers to provide a competitively priced product can incentivise worker exploitation, or tax fraud, in the absence of effective regulation.

18 The GLA takes an intelligence-based approach to its routine enforcement operations. Complaints from a range of sources (primarily workers, businesses, and other enforcement agencies) are compiled, and investigative action is prioritised according to the likelihood and seriousness of a potential breach. The GLA's practice here follows from the National Intelligence Model, whereby intelligence is submitted to an analysis which involves an assessment of the reliability and accuracy of information submitted. This process is known as "operational tasking", and is a well-established technique for prioritising the routine allocation of a regulator's resources according to risk.

19 We were not convinced that, to date, the GLA had struck quite the right strategic

balance between work with relatively compliant businesses and those deliberately operating outside the law. Some of its operations have had a tactical rather than a strategic character. Now that the licensing regime is well embedded, the GLA's leadership is aiming to focus its energies on the more serious risks which are associated with labour providers who currently fall outside the licensing system altogether and who, because they operate at the margins of the economy, are relatively unknown. Its intention is to develop its capacity to take effective enforcement action against labour providers and labour users deliberately seeking to circumvent the law. With this in mind, the GLA aims to improve its "strategic tasking", the process which considers trends and wider information which is emerging from the intelligence received (for instance, where there are known problems in specific regions or sectors), with a view to allocating resources at a more strategic level to focus efforts on the most risky areas. The Review Team welcomes this approach.

20 In one area (inspections to which new applicants for licences are subject), we found that the scale of inspections as currently performed can be disproportionate to the underlying risks, which means that resources can be diverted away from investigations into more serious cases.

21 The GLA argues that there is increasing evidence of 'phoenixism' (i.e. companies that cease trading and return to the market shortly thereafter under a different name) and that application inspections have a role to play in dealing with the associated risks. While acknowledging that this is a factor, we believe that a more targeted approach could be taken. We have some relevant comments under "inspections", below.

We found:

- **The GLA’s routine enforcement activities are prioritised according to known risks**
- **The GLA is aware of the need to develop its processes to tackle more serious risks at a strategic level, and has plans to do so**
- **The current requirement to make routine application inspections can divert resources away from higher-risk areas**

Transparency and Accountability

- 22** A number of factors have combined to ensure that the GLA has a good reputation for transparency amongst many of its stakeholders.
- 23** The GLA’s Board is large, and includes representatives of trade unions, trade associations, labour users and labour providers, as well as other government agencies. The basic composition of the Board is set in secondary legislation. We were not convinced that this framework provided as thorough a strategic challenge as would normally be expected from a more typical Board for a regulator. Nevertheless, we were impressed with the extent to which this structure had helped deliver a surprising degree of consensus about the direction of the GLA’s work amongst groups with disparate interests in the early stages of its work. We felt that other approaches, for instance the use of a more conventional Board supported by an informal stakeholder reference group (or other consultative processes), could have had a similar effect however. The constitution of the Board is a matter for Defra Ministers.
- 24** We met many Board members as part of the review process. These included representatives of trades unions, labour providers, and trade associations, all of whom gave their views on the GLA and the existing structure from their different perspectives. Our discussions with them made it clear that their “representative” role was understood differently by some Board members in practice. The GLA needs to be aware of the risk that the Board may sometimes not be acting in a fully representative way, and its Terms of Reference might be reviewed to help deal with this issue.
- 25** Stakeholders who were not immediately represented on the Board found the GLA less transparent: this is particularly true for labour providers and their representatives who argued that some of the processes relating to decisions in relation to licensing were insufficiently transparent. We have some relevant comments under the section on “Sanctions”, below.
- 26** Under s. 1(2)(e) of the Act, the GLA has a duty to keep the operation of the Act under review. This duty has been taken seriously and the GLA has commissioned ongoing and public external evaluation to support it in this role. In 2007, the GLA commissioned an evaluation baseline report from researchers based in the University of Sheffield. The results have been published⁵ and this has been followed up with two subsequent annual reports. The Reports have addressed a number of key issues, including developing a full picture of the economic context within which the GLA operates, as well as the GLA’s own performance.
- 27** This is an independent study, the most recent of which has been phrased around three key questions: “1) How well is licensing working? 2) Are agency workers safer because of licensing? 3) How well has the GLA done as it has moved into

⁵ Professor Andrew Geddes Dr Sam Scott, Miss Katrine Bang Nielsen, Gangmasters Licensing Authority Baseline Baseline Report (2007), available at: http://www.gla.gov.uk/embedded_object.asp?id=1013266

‘phase 2’ of its activity?”⁶ The series of reports has helped create a clearer understanding of the issues facing the sector and has provided a number of suggestions for improving the GLA’s effectiveness.

- 28** Like some other regulators of recent creation being considered under the Hampton Implementation Review process, the GLA was created to regulate an economic sector that was relatively unknown, and much of which traditionally formed part of the “informal economy”. The Review Team found that the use of external evaluation had helped develop a clear and evidence-based picture of the GLA’s operating context in an area where data had originally been weak. For instance, before GLA had been created there had been little idea of the number of businesses who would be required to submit to licensing, and the estimate of the number of probable licensees was overestimated by a factor of four in the impact assessment accompanying the Act. The position is now much better understood.
- 29** More generally, we were impressed with the receptiveness of GLA staff at every level to challenge and engage in discussion during the process of the Review.
- 30** In one key area (decision-making in relation to licences) we found that the GLA’s processes could be opaque for many of its stakeholders, and that more could be done to make its thinking clearer for licence-holders in particular. We have some relevant comments under “Sanctions”, below.

Good Practice: the GLA evaluation study

The GLA commissioned the Universities of Liverpool and Sheffield to independently assess its effectiveness.

The reviews are formative evaluations which identify areas of improvement and aspects of current practice that have worked well. The reports consider the overall attitudes prevalent in the GLA-governed sectors on the extent to which licensing represents the best solution to the problem of worker exploitation and business fraud. The evaluations provide the GLA with the evidence-based insight that allows it to improve as a regulator.

The research was fully independent.

A baseline report was published in 2007. Two subsequent annual reviews were published in November 2007 and March 2009. The 2007 review was purposefully extensive in scope so as not to miss any potential issues. The 2008 report focussed in on the key issues identified in the 2007 report. No report is planned for 2009; however a survey into how workers are treated will be conducted.

Some further findings regarding the study are addressed under the section “Focus on Outcomes”.

⁶ Gangmasters Licensing Authority Annual Review 2008 Executive Summary, p 8, available at http://www.gla.gov.uk/embedded_object.asp?id=1013506

We found that:

- **As a regulator, the GLA sets a high standard of transparency in relation to its work and achievements and has been unusually open to constructive external challenge**
- **There needs to be more clarity about some of its licensing procedures and decisions**

Economic Progress

- 31** The GLA has worked closely with partners from all the relevant parts of a complex economic system to develop a system of regulation that has an unusual level of buy-in. Its work with supermarkets and labour users (who are, directly and indirectly, labour providers' main customers) has been particularly close. Through initiatives like the annual evaluation study, it has developed its understanding of the economics underpinning the sector, and we

found in practice that the GLA staff have a strong grasp of the economic implications of their specific enforcement actions. We found that regulatory impact assessment could be improved both in the design and the implementation of policy (areas where Defra and the GLA respectively have responsibilities). However, the GLA has done well in developing a process of Community Impact Assessment that minimises the adverse economic effects that some of their enforcement actions might involve. We have some relevant comments under "Design of Regulations" and "Sanctions", below.

We found that:

- **The GLA has done well in developing an understanding of a complex sector with a significant economic impact, and its Community Impact Assessment process provides a good model of how to reduce the possible unintended consequences of enforcement action**

Design of regulations

Hampton principles

“All regulations should be written so that they are easily understood, easily implemented, and easily enforced, and all parties should be consulted when they are being drafted”

“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 imposed”

Key findings

- **The use of a licensing system could have led to “gold-plating” of the law underpinning the standards, but the GLA has done well in keeping additional regulatory burdens to a minimum**
- **In many respects the GLA follows good regulatory practice in policy-making, but the quality of regulatory impact assessment could be improved**
- **Consultation processes are in general sound, but can be over-reliant on the GLA Board and trade associations**

Background

- 32** The basic framework for licensing providers is set out in the Gangmasters (Licensing) Act 2004, and in the secondary legislation which flows from it. The GLA is responsible for designing the detail of the licensing system in operation, and for its implementation.
- appropriate for the regime to focus on the food sector alone, rather than other aspects of agency working. Other questions were raised about some of the current exemptions from the licensing regime: for instance, the use of labour in packing food for wholesale markets.
- 33** This Hampton Implementation Review is focused on the GLA’s performance within the constraints placed on it by the legislation. Some of the issues that were raised with us by the GLA and by its stakeholders during the review week fall, strictly speaking, outside the scope of this review, which is focused on the regulator’s own performance against the Hampton and Macrory principles rather than on the merits of the underlying regulations. In discussion, some stakeholders questioned whether a licensing regime was the best means of addressing what was widely seen as inadequate enforcement of the existing regulations, and whether it had been
- 34** Specific responsibility for the development, consultation, and implementation of specific regulations under the Act lies with the GLA’s sponsor department, Defra.
- 35** There are a number of exemptions where the risk of serious exploitation is deemed to be minimal. These are set out in the Gangmasters Licensing (Exclusions) Regulations 2006.
- 36** The GLA has been responsible for implementing the Gangmasters (Licensing) Act and for setting in more detail the framework for the licensing system that it manages.

- 37 The Licensing Scheme came into effect in April 2006, though it only became an offence to operate without a licence (or to use labour provided by a company without a licence) in October of that year.
- 38 The GLA is responsible for setting the Licensing Standards, which specify the specific conditions that must be satisfied in order to qualify for and retain a GLA licence. At the time of the review, the Licensing Standards imposed at the start of GLA’s work had been reviewed, and a new set of standards were about to be introduced, with effect from April 2009.
- 39 The GLA is in many respects a “generalist” regulator: it was not set up to impose new regulatory standards on labour providers, but rather to provide more effective enforcement of the existing regulations in an area where, historically, enforcement was widely perceived to have been insufficiently rigorous. The licence regime provides an additional framework to incentivise compliance. To qualify for a licence, applicants must show that they meet certain conditions (taken in order from GLA guidance). See Figure 1 below.
- 40 This means that the GLA is effectively responsible for ensuring that licence holders are compliant with regulations which strictly speaking “belong” to other regulatory agencies, whether in terms of their basic design, or enforcement. The GLA therefore works closely with government departments and other regulators in developing and implementing the relevant standards. Many of the relevant bodies are directly represented on the GLA’s Board.
- 41 Licence holders are also however subject to a GLA-specific “fit and proper” test and

Figure 1: GLA licence conditions and sponsoring Department/Regulator

Sponsoring Department/ Regulator	Licence Conditions
BIS Defra HMRC DWP	Pay and Tax matters (requiring for instance that licence holders are appropriately registered with HM Revenue and Customs, and pay the appropriate National Minimum Wage or Agricultural Minimum Wage rates);
Home Office	Prevention of Forced Labour and Mistreatment of Workers (requiring for instance that there should not be debts between a licence holder and worker that prevent the worker seeking other employment);
CLG / Local Authorities	Accommodation (requiring for instance that accommodation should be maintained in a good state of repair);
BIS	Working Conditions (requiring for instance that workers must be able to take legal minimum rest periods);
HSE DfT/VOSA	Health and Safety (requiring for instance that adequate and appropriate Personal Protective Equipment (PPE) is provided); and
BIS	Recruitment and Contractual Arrangements (requiring for instance that the licence holder must not charge a fee to a worker for providing work-finding services).

⁷ Defined in the relevant statutory instrument, the Gangmasters (Licensing Conditions) (No.2) Rules 2006 as the “the individual responsible for the day-to-day management of a business”.

a nominated “Principal Authority”⁷ competency test which requires that the holder or Principal Authority should be competent and capable to hold a GLA licence. Issues like criminal convictions and the individual’s history of compliance with other regulatory bodies are taken into account as part of the tests.

- 42 Decisions regarding suitability for a licence and whether to revoke a licence, are made via a points system, which reflects the seriousness of different factors involved. A total score of more than 30 points will mean that the application is refused, or an existing licence revoked. Under new Licensing Standards introduced in April 2009, a “critical” breach will bring a penalty of 30 points, and will therefore mean revocation. Other standards bring smaller points penalties that in isolation will not involve revocation. Points are weighted towards those elements of the standards which are deemed to be more serious. Some further issues relating to revocations are discussed under “Sanctions”, below.

Review Findings

The use of a licensing system could have led to “gold plating” of the law underpinning the standards, but generally speaking the GLA has done well in keeping additional regulatory burdens to a minimum

- 43 Embarking on the review, the Team was conscious of the risks that a licensing system of this sort could bring gold plating of existing legislative requirements in the various areas addressed by the licensing standards. We discussed the key elements of the licensing standards with stakeholders, and with those responsible within the GLA for the design of policy. In general, the GLA had been careful to avoid

putting any additional requirements on labour providers above and beyond what is specified in the existing law.

- 44 New Licensing Standards apply from April 2009. These have been simplified since the first version, making the system easier to understand, and more targeted and proportionate in focusing on cases of the most serious abuse. Some of the standards which were seen to have little practical effect in protecting workers or other regulatory outcomes were removed from the existing suite: for instance, licence holders had been required as part of their responsibilities under the standards to provide their licence number and other details to their workers and labour users. This was unnecessary given the ability of labour users to check the online public register of licences, and was removed from the new standards. The GLA also takes a view on whether new regulations should be incorporated into the licensing standards: a proposal that the regulations around smoking (which would have had an impact as smoking is illegal in transport used for work purposes) should be incorporated into the standards was considered, but was rejected on the grounds that this was insufficiently serious an offence to be incorporated into the standards which are designed to tackle exploitation of the most serious sort.

- 45 There are aspects of the licensing standards where requirements have gone beyond strict *legislative* specifications set out elsewhere however. Some of the detailed requirements relating to shellfish businesses are derived from Health and Safety Executive guidelines which have a “good practice”, rather than a mandatory character⁸ in their original form. In this instance, the GLA has taken the view that there is a case for specific standards in the interest of protecting vulnerable workers in the light of a very specific abuse, but a

⁸ “Guidelines for safe working in estuaries and tidal areas when harvesting produce such as cockles, mussels and shrimps”, available at: <http://www.hse.gov.uk/pubns/estuary.htm>. These guidelines were introduced by HSE following the Morecambe Bay tragedy.

more principles-based approach would be more consistent with the underlying legislative framework from which the guidelines are drawn.⁹

In many respects the GLA follows good regulatory practice in policy-making, but the quality of regulatory impact assessment could be improved

- 46** The GLA adheres to better regulation principles in the policy-making process. It has consistently introduced regulations on common commencement dates, and issues guidance well in advance of regulations coming into force. It works closely with key trade associations through the consultation process, including the Association of Labour Providers, which supplements GLA guidance with its own guidance for members.
- 47** The Review Team were less convinced by the quality of impact assessment used: generally, there has been little or no formal quantification of the likely costs and benefits of new initiatives. Impact assessments for the Licensing Standards Review Consultation (August 2008), and new GLA Licensing Fees (January 2009), for instance, gave no estimate of the likely aggregate costs of these two important initiatives. The GLA has set in place strong procedures for assessing the impact of specific enforcement actions on communities (and we have some relevant comments under “Sanctions”, below); more could be done at the point where policy is designed.

Consultation processes are in general sound, but can be over-reliant on trade associations

- 48** The GLA has a relatively small number of regulated stakeholders, but many of these are hard to reach. Consultation processes are, in general, thorough, and have resulted in meaningful changes to proposals on the basis of stakeholder views. Informal consultation is continuous, and formal consultation processes are also used. For instance, relatively minor “reportable” and “correctable” breaches from the licensing standards (which, although not introduced in the first years of operation, would have brought penalties of four and two points respectively when implemented under the old system) were removed to simplify the system in line with stakeholder feedback. This change has also made the system as a whole more proportionate, focusing licensing action on more serious issues. Work with the main trade associations and other relevant parties (who are represented on the GLA’s Board) is close, and has been enhanced by tailored work with specific groups representing labour users and labour providers, but given the fragmented character of much of the sector, the Review Team felt that more could be done to give headquarters staff more direct exposure to conditions in the field as a basis for building a closer understanding of issues affecting the sector.

⁹ The HSE guidance is not strictly compulsory. The HSE position is that if the guidance is followed, that will normally be regarded as sufficient to comply with the law, but alternative approaches can be adopted. There would in that case be an assessment as to whether the approach met all of the identified risks.

Advice and guidance

Hampton principle

“Regulators should provide authoritative, accessible advice easily and cheaply.”

Key findings

- **The GLA’s “generalist” role means that there have been difficulties in giving prompt and consistent advice to labour providers**
- **The GLA has made impressive efforts to get information about its work to vulnerable workers, but could do more with labour providers themselves**

Background

- 49** The GLA provides guidance and advice in a wide range of formats. It seeks to issue printed guidance that meets a high “plain English” standard, and has a range of publications directed at different stakeholders. There are separate publications about the work of the GLA for labour providers themselves, who are subject to licensing requirements, and for labour users, who buy their services.
- 50** Compliance and enforcement staff also give face-to-face guidance. This can relate to the licensing process, or to the various areas of regulation covered by the licensing standards (which can include technically difficult areas of legislation, including the Agricultural Minimum Wage regulations).
- 51** The GLA also hosts a phoneline, which allows regulated businesses to ask questions about the licence regime, individuals to pass on intelligence about cases of suspected non-compliance, and workers to ask about their own rights. A list of Frequently Asked Questions is maintained and updated in the light of inquiries, but was temporarily unavailable online at the time of the review.
- 52** Most important documents are made available online. The GLA website contains important information to help businesses comply with the law, including a register of licensed labour providers, companies that have been inspected and individuals and companies whose licences have been revoked. This is important information for labour users who may be committing an offence where they use unlicensed providers.
- 53** A number of stakeholders put it to us that GLA inspectors could be inconsistent in their interpretation of the law, or that they had found it difficult to get clear advice from them quickly on whether particular issues would affect their licence.
- 54** GLA inspectors are required to assess compliance against a very wide range of criteria; they need to be generalists,

Review Findings

The GLA’s “generalist” role means that there have been difficulties in giving prompt and consistent advice to labour providers

assessing health and safety and transport standards, as well as more complex areas of law like tax and both the National Minimum Wage and Agricultural Minimum Wage Regulations. The stakeholders we interviewed felt that there had been considerable inconsistency in the advice that had been given in practice, but recognised that this had in part reflected the GLA's practical difficulties in implementing a complex system of licensing and enforcement at a time when few staff with the right balance of technical expertise and investigative skills had been available.

- 55** The GLA is however aware of this issue. Compliance and enforcement staff acknowledged that there had been difficulties particularly in the early stages, and said that the GLA is working to bring more consistency in practice, through training and development initiatives. At the time of the review GLA staff in all operational areas were undergoing training on the implementation and interpretation of the new standards.

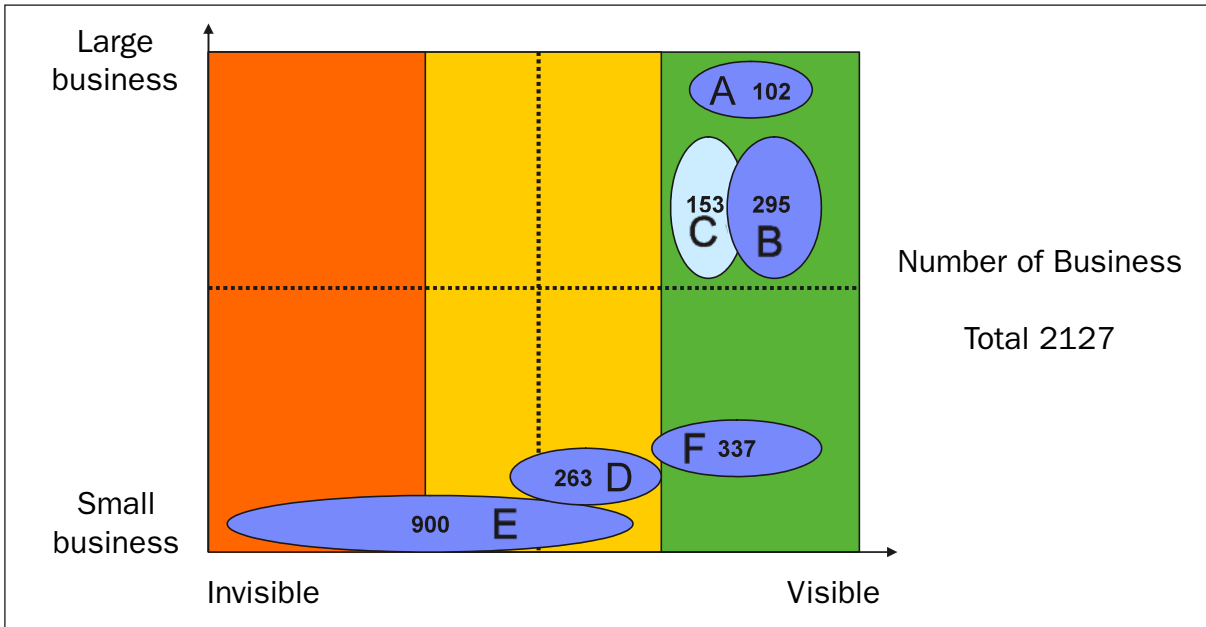
The GLA has made impressive efforts to get information about its work to vulnerable workers, but could do more with labour providers themselves

- 56** The GLA has made considerable efforts to target communications at vulnerable workers. Some of these do not have English as a first language, or come from cultural backgrounds where direct engagement with government agencies is unfamiliar or intimidating. In extreme cases, direct intimidation and physical violence can be used by exploitative labour providers to prevent whistle-blowing, and the GLA faces significant challenges in raising the profile of its work with some of the workers at the margins of the system.
- 57** Tackling this issue has been a priority for the GLA, and we were impressed with the

work that the GLA had done to ensure protection of their interests. The trades unions representatives who spoke to us were particularly complimentary about the way in which the GLA had dealt with this issue. The GLA has used targeted advertising to raise the profile of its own helpline, and employs staff with the right language skills to handle inquiries from workers coming from countries where the risks of exploitation are particularly high (the risk profile changes over time, but the GLA emphasised that these were significant in Bulgaria and Romania at the time of the review). It has also advertised and used the media outside the UK and elsewhere. The GLA has also sought to publicise its requirements in migrant language papers in the UK, and achieve press coverage for its activities in other countries (e.g. Bulgaria) where the relevant offences can take place (for instance, where labour providers charge employees for their services in finding work, which is illegal under UK employment law) and therefore a condition of licence holding even for foreign-based companies.

- 58** As an audience, labour providers themselves present fundamentally different issues, but they too can be hard to reach. Providing guidance and advice in an effective form that meets their needs also presents challenges. The name "gangmaster" can be deceptive: firms which are subject to the licensing law in practice range from very large organisations with a wide portfolio of agency workers (in many cases also operating in areas of activity which would entail the need for a GLA licence), to smaller operators, sometimes working in remote areas.
- 59** The diagram overleaf (prepared for the GLA at an early stage of its operations before the size of the sector was well understood), presents its view of the relative size and "visibility" of different parts of the sector.

Figure 2: Labour providers (number businesses)



60 One of the trade associations represented on the GLA Board, the Association of Labour Providers was set up shortly before the creation of the GLA, with a deliberate view to providing a voice for an under-represented sector in the development of a set of voluntary standards by the Temporary Labour Working Group. Its work in partnership with the GLA has been impressive in bringing a high level of awareness to many in the sector, but stakeholders from the sector felt that some of the GLA’s messages were still not getting through to some labour providers.

61 The GLA’s position vis-a-vis labour providers is partly deliberate, and reflects a conscious decision by the GLA to maintain the right level of “regulatory distance” in

the relationship. Going ahead, however, the GLA needs to maintain a strong working relationship in practice. As its strategic focus moves towards intelligence-led work on those labour providers who currently operate outside the formal licensing system, it will remain dependent on compliant companies continuing to provide meaningful intelligence about their competitors operating outside the law.

62 The GLA has a number of means of reaching its licensees, including a newsheet, “Licensing News”, and email alerts. Some of the innovative techniques that have been used successfully with vulnerable workers might be usefully applied here.

Data requests

Hampton principle

“Businesses should not have to give unnecessary information or give the same piece of information twice.”

Key findings

- The GLA’s specific data requirements are comparatively modest
- Some elements of form design are confusing and the process would benefit from the use of impact assessment
- The GLA depends on the frequent exchange of intelligence, though the exchange of information with some agencies can be one-sided, and other partners could be better involved

Background

63 The GLA only makes data requests as part of the licensing process itself, and businesses may be required to submit data at a number of points in the process:

- the licensing application form itself requires that applicants provide information about themselves (including any criminal convictions etc), their business, Directors, Partners, and the sectors within which they intend to provide labour. The forms also require information about turnover, which is important in determining the appropriate level of the licensing fee;
- inspectors may ask to see additional information when they conduct an application or other inspection, for instance tax records;
- licence holders are required to notify the GLA of any important changes in their circumstances since the licence was awarded (for instance, if they have had a criminal conviction);

- licence holders need to renew their licence on an annual basis. In general, there is a simple check to determine whether the information already held is still correct. The process can be carried out over the phone.

64 Under the heading of “Data Requests”, the Hampton Report also emphasised the importance of sharing data between government agencies where appropriate, to reduce additional burdens on business.

Review Findings

The GLA's specific data requirements are comparatively modest

- 65** The Review Team found that the GLA did not impose a significant data burden on labour providers. Most of the information required is necessary to effective regulation and there are no routine data returns involved beyond changes in the business's circumstances. Information about any such changes can be submitted easily. When renewing a licence, businesses need not resubmit the form as a whole, but can notify the GLA of any changes online or by phone. There is a requirement to submit critical information within a specified period. For instance, changes of ownership or Principal Authority which might impact on the company's "fit and proper" status need to be submitted to a specified deadline set in regulations. Under the revised licensing standards a failure to report changes could result in points being added to the licence. However, there is discretion for GLA staff to waive any points penalty that this might involve where this has inadvertently been overlooked rather than deliberately withheld.

Some elements of form design are confusing and the process would benefit from the use of impact assessment

- 66** The licensing form itself is the most important means by which the GLA requires data from business. We found that the explanations for the requirements for some of the information were not entirely clear: for instance, a requirement that licence applicants who are UK nationals should give their passport numbers.
- 67** Generally speaking, the GLA has worked to reduce the data burdens that might arise from routine data returns. For instance, instead of resubmitting new forms when

licences are to be renewed, they can discuss any changes with GLA staff over the phone. The introduction of the new Licensing Standards has meant that the basic licensing form has had to be redesigned, with the addition of some new information requests, including for instance a requirement that prospective licensees specify which sectors they plan to operate in. These and other changes mean that the form as a whole will need to be reviewed in phone discussions with GLA staff. This will place a one-off burden on businesses with the current round of renewals, and the Review Team found that more could have been done to assess the potential impact of this before implementing the process, although it is noted that the draft form was sent to the Labour Provider stakeholder group for review.

The GLA depends on the frequent exchange of intelligence, though the exchange of information with some agencies can be one-sided, and other partners could be better involved

- 68** Given the intelligence-led character of its operations, the GLA depends on frequent and meaningful transfers of information about companies who are suspected of non-compliance with its partners. Amongst these, police forces and HM Revenue and Customs are particularly important. The Act provides effective data gateways that allow for key information to be exchanged in a way that supports its work in tackling the most serious cases of non-compliance.
- 69** GLA informed the Review Team that there had been a significant development in the manner in which the GLA makes use of relevant data already held by other Government Departments. This development has ensured that they do not ask for information on the application form that is already held within Government. The IT process implemented by the GLA,

sending a hyperlink to a single point of contact in the other Departments that opens a questionnaire in the GLA database, enables those departments to simply provide data to the GLA relevant to the GLA licensing standards, and minimises burdens on the partner Departments and businesses alike.

- 70** Like many other regulators, the GLA has adopted the “National Intelligence Model”, which is effectively a set of tools within a business model for organisations for whom the effective use of intelligence is critical. The tools include regular operational tasking meetings, where an analysis of intelligence is presented, and where enforcement action is planned to deal with it. This may involve a decision to share intelligence with one of a number of agencies that might be better placed or more qualified to follow up on it.
- 71** GLA compliance and enforcement staff are of the opinion that the GLA routinely shares data with its other partners, but that, at present, some of their partners are largely reactive in passing information back to them. Intelligence is shared with it on request, but this has yet to become a routine matter for many of its partners.
- 72** The GLA has formed strong operational relationships with some key stakeholders, including HMRC and police forces, and increasingly with overseas authorities, most notably and recently in Bulgaria. The Review Team found that the potential of other sources of intelligence had not been fully explored: for instance, there are a number of regulatory agencies with an agricultural focus and extensive enforcement networks on the ground, and relationships could be developed further here to extend the GLA’s intelligence “reach”. We note that the GLA is developing closer links with LACORs, and are also particularly encouraged by the GLA’s intentions in 2009/10 to explore opportunities with agricultural regulators.

Inspections

Hampton principle

“No inspection should take place without a reason.”

Key findings

- **The GLA makes few routine inspections**
- **The exception to this rule is in the case of licence applications**
- **The GLA needs to develop the right range of skills to become a really effective enforcement body**

Background

- 73** GLA inspections fall into two main categories:
- application inspections, whereby all businesses applying for a licence are subject to a visit by a GLA compliance officer, and
 - compliance inspections, targeted inspections directed at companies where intelligence suggests there are specific problems with a company’s compliance.
- 74** The GLA also conducts higher profile raids in cases where actions are likely to result in serious enforcement action. “Operation Ajax” was a programme of high profile operations in 2008. In October this involved unannounced inspections of 16 labour providers across Lincolnshire and Lancashire, deploying 15 officers over four days.
- 75** There were 586 inspections as a whole in 2007/08. Since starting its operations, the GLA has conducted 1339 Application Inspections and 512 Compliance inspections.
- 76** Many labour providers and labour users regard inspection by regulators and by their partners as a routine part of their work. The Review Team was struck by the extent to which GLA inspections form just one part of a range of different audit processes that impact on labour providers and labour users. We were struck by the extent to which labour users (those involved in food harvesting and packaging employing the services of labour provided by licensees) can be subject to multiple, sometimes very rigorous audits by those that use their services. This ultimately reflects the supermarkets’ interest in ensuring that ethical standards are being met throughout the food supply chain.
- 77** Before the creation of the GLA, many of its stakeholders were involved in the Temporary Labour Working Group (TLWG), which sought to establish some basic standards of good practice, and a system of audit against those standards. In its initial set of licensing standards, the GLA agreed to grant labour providers who had been subject to a successful TLWG audit access to a licence without further inspection. Several stakeholders put it to

us that, looking back, the auditing standards applied to the TLWG audit had been insufficiently rigorous, meaning that the original issue of licences included a number of companies whose compliance was in fact weak. This issue has now been dealt with by the GLA.

Review Findings

The GLA makes few routine inspections

- 78** GLA is a relatively small regulator with limited resources to devote to inspection. It carries out very few “routine” inspections. There are no cyclical inspections of labour providers, and compliance inspections are predominately intelligence-led.

The exception to this rule is in the case of licence applications

- 79** We were not convinced that the GLA’s current policy of conducting an inspection for every new licence application was justified.
- 80** Some of the stakeholders that we interviewed argued that the risks to workers within the relevant sectors are, generally speaking, so high that a universal inspection regime of this sort was justified. This policy has significant resource implications however, and can divert resources from more serious risks. Labour providers are geographically spread, which means that the visit itself is costly in terms of officer time. As the applicant is often new to the sector, it can be difficult for an inspection to gain a meaningful idea of how compliant the business will be with the licensing standards once a licence has been awarded. Where the company is doing comparable work in sectors outside the licensing scheme, inspectors will consider the business’s existing systems, but inspections can only provide limited evidence before a company is fully in operation. The Review Team felt that, given the serious risks posed by some labour

providers operating outside the licensing scheme altogether, some of the inspection resource currently devoted to application inspections could be put to more effective use. In its early stages of operation, the lack of significant data about much of the sector meant that such inspections had an important information-gathering purpose. This is no longer a valid consideration, and the GLA is in the process of reviewing a risk model which might allow for a more tailored approach (for instance, exploring the extent to which telephone calls could be used in some cases rather than site visits). We would encourage it to reassess its policy as soon as possible.

The GLA needs to work to develop the right range of skills to become a really effective enforcement body

- 81** The GLA’s leadership is committed to giving its future work more of an enforcement focus: acting more decisively against cases of clear criminality, and spending less time working with the more compliant businesses. The Review Team believe that the GLA should work to ensure that this does not result in a change of attitude to those businesses who have been working hard to comply with the regulations: nevertheless, this strategic direction is fully consistent with the Hampton vision and will help meet the expectations of many of its stakeholders, not least businesses who fear they are being undercut by labour providers operating outside the law.
- 82** The GLA at present does not, by its own admission, have the right balance of skills to operate on this basis. In its first years of operation, the emphasis has been on building inspection staff’s understanding of the wide range of regulations that come within their remit, with a view to supporting licensed businesses into higher standards of compliance. A more aggressive enforcement strategy to tackle serious crime will involve an enhanced skill set for all front line staff so that all staff are

upskilled in the areas in line with the current skills of the designated enforcement officers. The relevant skills are partly procedural, like taking evidence under caution, but forensic skills are also important. The GLA is working on a programme to develop its staff in the skills required for an enforcement strategy where prosecution of serious cases will play a larger part than has been the case to date.

Sanctions

Hampton & Macrory principles

“The few businesses that persistently break regulations should be identified quickly, and face proportionate and meaningful sanctions.”

“Regulators should be transparent in the way in which they apply and determine administrative penalties.”

“Regulators should avoid perverse incentives that might influence the choice of sanctioning response.”

“Regulators should follow-up enforcement actions where appropriate.”

Key findings

- **The GLA has a clear enforcement policy, but procedures around licensing decisions can be confusing for businesses**
- **GLA staff are aware of, and act upon, the risks of unintended consequences in their enforcement work**
- **There have as yet been few prosecutions for those seeking to operate outside the licensing system, but the GLA is seeking to increase its enforcement capacity**
- **The GLA has made extensive use of the media to publicise its enforcement operations, but there are risks with this approach**

Background

83 The GLA has a range of actions open to it in tackling cases of non-compliance.

Prosecutions

84 Where a business fails entirely to comply with the law relating to licensing, the Act sets out a number of offences that the GLA may enforce, most importantly:

- acting as a gangmaster within the definition set out in the Act without a licence and related offences (section 12);
- for labour users, entering into arrangements with a gangmaster who contravenes section 12 (i.e. hiring

labour from an unlicensed gangmaster) (section 13);

- obstruction of an officer in carrying out his duties under the Act (section 18).

85 Short of prosecution, the GLA uses formal warnings and cautions to incentivise compliance where it believes an offence has been committed.

86 Formal enforcement action may also be taken by other regulatory agencies who are responsible for the legislation which underpins the Licensing Standards. HMRC, for instance, can prosecute individual labour providers that fail to meet their tax obligations.

- 87** The enforcement statistics by the GLA itself as of 23rd June 2009, were as follows:

Formal Warnings	
Section 12	31
Section 13	32
Section 18:	3
Formal Cautions	
Section 12:	8
Section 13:	2
Convictions	
	2
Cases currently with prosecutor	
	9

Licensing Actions

- 88** For those within the licensing framework, other licence-based sanctions are available. On the basis of the licensing points system, action is taken proportionate to the level and risks posed by specific types of non-compliance. In simple cases that can be easily remedied, compliance officers have discretion to work with the business to put matters right without recourse to formal action. In more serious but remediable cases, “additional licence conditions” can be imposed, which require a business to take steps to come into compliance within a specified time limit. This has a similar effect to what is often called an “Improvement Notice” in other regulatory frameworks.
- 89** In serious cases licences can be revoked, with immediate effect in some cases.
- 90** 1,214 licences (22 with conditions) were valid on 23rd June 2009; licensing statistics from throughout the GLA’s period of operation up to that date were as follows:

Applications (including 90 in application process; 10 started but not yet submitted, and those in the categories below)	2,227
Revocations without immediate effect	87
Revocations with immediate effect	8
Applications refused	66
Ceased trading	421
Applications rejected	309

- 91** Labour providers whose licences have been revoked, or who have additional licence conditions imposed, may appeal against the decision. Appeal statistics (as of 23rd June 2009) were:

Appeals made	106
Appeals against ALCs in progress	0
Appeals against refusal in progress	3
Appeals against revocation in progress	9
Appeals won by GLA	41
Appeals lost by GLA	4
Appeals withdrawn by Gangmaster	45
Appeals withdrawn by GLA	4

Review Findings

The GLA has a clear enforcement policy, but procedures around licensing decisions can lack clarity for businesses

- 92** The GLA has a clear enforcement policy statement, setting out the principles it will adopt when choosing to take a specific enforcement action, the enforcement options that are open to it and the public interest factors it will take into account (eg history of offending, deterrent effect, personal circumstances of the offender) when deciding whether to prosecute.
- 93** The enforcement policy is relevant only to decisions relating to criminal offences; it has no implications for the ways in which the GLA tackles licensing decisions, including decisions to revoke.
- 94** The licensing framework (much of which is derived from the Act, and where there is little scope for GLA modification) has a number of features which can make it confusing for businesses in practice, and the stakeholders that we spoke to from the regulated sector had a number of comments on aspects of the licensing process that they found difficult to understand in practice.
- 95** Representatives of regulated businesses put it to us that the GLA could be inflexible in enforcing the law, imposing penalties in cases where there had been an honest mistake, or where things could have been put right without recourse to formal action. They also argued that, in some cases, there had been a lack of clear feedback on the reasons why penalties had been incurred. Our discussions with compliance and enforcement staff in fact indicated that officers in practice have considerable discretion as to whether to take formal action, and in practice are empowered to take decisions which would make allowances for honest mistakes or minor issues. For instance, they have the ability to allow a business a short grace period which will allow action to be taken quickly in minor cases without requiring that formal licence conditions be imposed. Further clarity about the circumstances in which this is considered would help address stakeholders' concerns about decisions that can seem to be inflexible in practice.
- 96** The GLA's policy on revocations and reapplications has also created some confusion in practice. Where a licence has been revoked, the GLA permits companies to submit an application for a new licence. This allows for non-compliant companies to work on areas where they currently fall short, and re-enter the market when this has been done. As the GLA itself recognises, this can be confusing for labour users who have registered for the 'active check' service which gives them news on particular licence-holders. The GLA argues however that the process is essential given the final character of a full revocation.
- 97** While we accept the GLA's thinking on the need to allow companies to resubmit in this way, we found that the GLA's policy is in practice causing some confusion for many of its stakeholders, particularly given concerns about the threat posed by "phoenix companies" that follow a deliberate strategy of rebranding under a new licence to evade effective compliance action. The situation is quite different with companies who are seeking to comply but who are compelled to reapply in this way once changes have been made, but this issue means that there are sensitivities about the GLA's particular position which mean that clearer communication about the thinking behind this issue is needed.
- 98** We believe that a single statement of policy in relation to licensing decisions, similar to the Enforcement Policy already published by

the GLA, would help bring more transparency to the processes involved for licensees and labour users alike. This should explain the thinking behind issues like revocation and reapplication, and set out the factors that the GLA will take into account, including those circumstances in which using officers' discretion not to pursue formal action will be considered.

GLA staff are aware of, and act upon, the risks of unintended consequences in their formal enforcement work

- 99** Where regulators take enforcement action in isolation, it can have a range of unintended consequences. Fines, for instance, may have an impact on those who bear no direct responsibility for the failure to comply in the first place, including customers and employees.
- 100** The GLA regulates some very large labour providers that provide employment to large numbers of workers, and have an important role within the food supply chain. Revocation of a licence means that a company has to cease trading. This can impact indirectly on communities, by removing a source of employment, and in some case on the national supply of specific food products. The Review Team discussed the implications of enforcement action with some of the GLA staff who are responsible for taking licensing decisions in practice, who had a strong awareness of the issues involved.
- 101** The GLA has developed a "community impact assessment" process which helps determine what decision will be taken with a particular licence. Where a decision to revoke goes ahead, and it is judged that this could have a significant impact on a community, the GLA will work with its partners, which can include local authorities, police, welfare organisations, and labour users (where they need to
- consider sourcing the labour from other labour providers, or temporarily directly employing workers), to try to secure employment for those who might suffer from the decision, and continuity for the labour provider's clients. This process has been successful in preventing more widespread disruption in a number of cases.
- ### **The GLA has made extensive use of the media to publicise its enforcement operations, but there are risks with this approach**
- 102** A number of stakeholders commended the way in which the GLA had "punched above its weight", developing an unusually high profile for a regulator that is small in staff terms.
- 103** Use of the media has formed a key part of the GLA's enforcement strategy to date, and it is explicit in its view that naming and shaming plays an important part in incentivising compliance alongside more formal enforcement tools. "Regulation by reputation" is particularly powerful in this sector, in that there is potentially collateral damage for the very high profile reputation of labour providers' and users' ultimate customers, the supermarkets. The market places intense pressures on labour users and labour providers to maintain a good reputation for ethical standards. Exposure of failings in the media can in fact have more impact on a business's operations than a formal sanction, and fear of exposure can be a more effective incentive than the risk of formal legal action. The GLA has so far had a positive relationship with the media, and it deliberately uses it to derive maximum impact from its enforcement activities, some of which have had extensive news coverage.
- 104** Media interest can however be unpredictable and there are risks with this approach. As the GLA itself recognises, its

Good Practice: The GLA's Community Impact Assessment Process

The GLA community impact assessment is a key element of procedure to ensure that there are no unintended consequences for workers, increasing their vulnerability, where it is necessary to revoke a licence. This is critical where the licence is revoked with immediate effect. The GLA will liaise with police and welfare organisations to ensure that the impact on the community is managed, and that large numbers of unemployed migrant workers do not create public order offences. Where possible the GLA will seek the assistance of the labour user to take on workers directly, to avoid the workers becoming unemployed, and enable the labour user to meet its contractual commitments. The labour user may then be able to contract with another labour provider who will take on the workers and the contract. In one high profile case the GLA was able to arrange for the labour user to do so, and this approach was fully supported and assisted by the supermarket to which the company supplied its produce.

relationship has been strong and positive to date, but this position may change. The emphasis has been on the GLA's work in winning specific compliance "battles" and publicising these, but there are further strategic risks in terms of the unintended consequences that might affect the wider "war" – non-compliant businesses may be driven further underground, for instance, and valuable sources of intelligence could be alienated. Given the prevalence of intimidation by some illegal labour providers operating at the fringes of the sector, publicity might also have the effect of silencing potential informants. The Review Team felt that the GLA might be in a stronger position to manage these risks if it had a clearer statement as to the circumstances in which using the media in this way is appropriate.

need to develop the right skill mix for investigations and evidence-gathering. The GLA recognises this issue and has plans to tackle it.

There have as yet been few prosecutions for those seeking to operate outside the licensing system, but the GLA is seeking to increase its enforcement capacity

105 To date, the GLA has seen only one prosecution through to conviction, but some further prosecutions are in preparation. As the GLA enters an "enforcement" phase of operation, it will

Focus on Outcomes

Hampton principle

“Regulators should measure outcomes and not just outputs.”

Key findings

- **GLA staff have a clear focus on outcomes, but its corporate documentation tends to focus on output measures**
- **The 2008 Annual Evaluation of the GLA has established a useful suite of Comprehensive Performance Indicators. If taken up in future years, this will provide a good basis for continuing assessment of the GLA’s impact**

Background

106 The GLA is intended to secure a range of social outcomes. Its stated mission is to “safeguard the welfare and interests of workers whilst ensuring labour providers operate within the law.” There are a number of implications to the phrase “operate within the law” which do not impact directly on worker welfare. Non-compliance in the sector is ultimately driven by competition: exchequer fraud, deliberate evasion of tax and related payments, can give an illegal labour provider a significant edge over competitors and, in practice, the GLA is as much concerned with reducing this risk as with worker protection.

107 The GLA’s overriding emphasis on the welfare of workers is accentuated throughout the GLA’s documentation, and publicised in a range of media (for instance, in a video introduction to the GLA, available on YouTube), and in clear messages like that presented in its Annual Report for 2007/08, “We will not stand for abuse of workers, we will stamp it out”.

108 In its Annual Report for 2007/08, the GLA reported on achievements against a number of targets.

Review Findings

GLA staff have a clear focus on outcomes, but its corporate documentation tends to focus on output measures

109 The Review Team found that GLA staff at all levels in the organisation had a consistent sense of the organisation’s intended outcomes. They emphasised a reduction of worker exploitation and reducing exchequer fraud by labour providers operating outside the formal economy as their main focus. This closely reflects the GLA’s mission statement. The GLA has an advantage here over many other regulators, as its small size allows for internal consistency to be achieved relatively easily, but nevertheless we found this consistency of purpose impressive.

- 110** A focus on measures of success was also in evidence in the physical layout of the GLA's premises. Whiteboards showing progress in enforcement action were prominently displayed in a way that meant that all the regulator's staff were aware of them. Statistics on many key enforcement issues like licensing appeals were consequently readily available to the Review Team on request. Staff could provide these immediately in discussion, without needing to refer to background documentation.
- 111** We were not however convinced that this spirit was at present adequately reflected in the GLA's corporate documentation. The targets in the GLA's Corporate Plan for 2008/11 are largely based on process commitments (for instance, to conduct a survey of customer and stakeholder views of the GLA and develop a media strategy). The Annual Report for 2007/08 gave numerical measures against a wide range of business measures (for instance, turnaround time in dealing with external complaints), and reducing the unit cost of issued licences. However, public reporting does not, as yet, fully reflect the GLA's impact in the wider context, nor give a clear idea of its underlying strategy. The GLA's current Board structure may have had a role to play here, as its size and operational / consultative focus may tend in practice to undermine the strategic challenge function which would normally be a key part of a Board role.

The 2008 Annual Evaluation of the GLA has established a useful suite of Comprehensive Performance Indicators. If taken up in future years, this will provide a good basis for continuing assessment of the GLA's impact

- 112** Measuring any regulator's specific impact on the outcomes that it is seeking to achieve is a difficult process. There can be specific successes, and these may be reflected in evidence against key outcomes,

but it is difficult to establish the extent to which the GLA's own actions have had the expected effect.

- 113** Some of the stakeholders that we spoke to called the rationale for the creation of the GLA into question. They argued that the risks were no greater here than in other comparable sectors. Even they acknowledged that the GLA had had a positive impact, however: for instance, in improving health and safety practice in a way that could have saved lives. There is at present no means of proving this however, partly on account of the absence of baseline data from before the GLA's creation.
- 114** The GLA-commissioned Evaluation Review for 2008 has put forward a Comprehensive Performance Index (CPI) which could serve as a basis for the GLA to monitor progress against some of its organisational outcomes. Some of the measures proposed, like economic growth, have only a remote connection to the GLA's work, but still are an important component of an overall picture of its work. The study gives baseline figures for 2008 as a basis for monitoring change over time. The Index includes a wide range of numerical measures, including:
- worker satisfaction with working for their agency (currently 40%);
 - numbers of intelligence reports received (currently 2,574);
 - estimates by licensees of the scale of unlicensed activity (currently 33%, compared to the GLA's estimate based on intelligence of 23-25%);
 - appeals against GLA licensing decisions won (currently 3%);
 - number of prosecutions won (currently 1).
- 115** Some of the indicators taken in isolation could have unintended consequences if they were 'cascaded' into individuals' performance assessments out of context.

For instance, a measure of the percentage of labour providers that have been visited by the GLA could incentivise unnecessary inspection. However, as the basis for an overall scorecard of issues that the GLA needs to be aware of, the CPI will be a good basis for further public reporting. We understand that the GLA proposes to use the CPI formally as a basis for public reporting on its performance in future years, and the Review Team welcomes this.

Appendix 1: Review Team membership

Steve Brooker joined Consumer Focus from the National Consumer Council where he led its work on regulation and civil justice issues. He now heads up the Fair Markets programme, which covers a wide range of areas including consumer law and justice, the digital economy, failing markets and sustainable consumption. Earlier this year he published Rating Regulators, a year-long study looking at the performance of six major regulators from the consumer perspective. Consumer Focus is the new statutory organisation campaigning for a fair deal for consumers in England, Wales, Scotland, and, for postal services, Northern Ireland.

Duncan Budd is Director of Transport, Environment, Climate Change & Communities in the BRE where he is on secondment from IBM.

Tony Edwards is Director of Animal Health, Wales. He joined MAFF as a Veterinary Officer in 1975, occupying a range of field and headquarter posts before becoming Chief Veterinary Officer in Wales in 1998. Following a re-organisation, he returned to Animal Health Headquarters in Worcester in 2005 where his responsibilities included Hampton implementation. He returned to his current post in Wales in 2005.

Simon Irwin is a financial audit manager at the National Audit Office, currently responsible for managing a portfolio of Defra family client bodies. Simon has worked at the NAO for almost 20 years and has previously worked both internationally, with United Nations bodies and domestically with a number of departments including the Ministry of Defence.

Appendix 2: Key findings and conclusions of the Hampton and Macrory reports

Hampton principles of inspection and enforcement

- Regulators, and the regulatory system as a whole, should use comprehensive risk assessment to concentrate resources on the areas that need them most
- No inspection should take place without a reason
- Regulators should provide authoritative, accessible advice easily and cheaply
- 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
- Businesses should not have to give unnecessary information, nor give the same piece of information twice
- The few businesses that persistently break regulations should be identified quickly, and face proportionate and meaningful sanctions
- 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
- Regulators should be accountable for the efficiency and effectiveness of their activities, while remaining independent in the decisions they take
- Regulators should be of the right size and scope, and no new regulator should be created where an existing one can do the work
- 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 imposed

Source: Hampton Report, Box E2 page 7

Macrory's principles and characteristics of an appropriate sanctioning regime

A sanction should:

1. Aim to change the behaviour of the offender;
 2. Aim to eliminate any financial gain or benefit from non-compliance;
 3. Be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction;
 4. Be proportionate to the nature of the offence and the harm caused;
 5. Aim to restore the harm caused by regulatory non-compliance, where appropriate; and
 6. Aim to deter future non-compliance.
1. Publish an enforcement policy;
 2. Measure outcomes not just outputs;
 3. Justify their choice of enforcement actions year on year to stakeholders, Ministers and Parliament;
 4. Follow up enforcement actions where appropriate;
 5. Enforce in a transparent manner;
 6. Be transparent in the way in which they apply and determine administrative penalties; and
 7. Avoid perverse incentives that might influence the choice of sanctioning response.

Source: Macrory Report, Box E1 page 10

Regulators should:

Appendix 3: Review scope and methodology

The review focused on those aspects of the GLA's activities where we considered that its actions have the most impact on business. These areas included the majority of its work.

Our methods included:

- interviews with a wide range of GLA staff including senior managers;
- interviews with other stakeholders including the trade bodies in the pharmaceutical sector and medical devices sector and business representative groups;
- focus groups of GLA inspectors, policy staff and enquiry staff;
- observational visits, including an application inspection;
- document review, including the GLA's high level strategies and plans.

The review process is described in *Hampton Implementation Reviews: Guidance for Review Teams* (available at <http://www.berr.gov.uk/files/file48275.pdf>). It is not the same as a full value-for-money audit of economy, efficiency and effectiveness and the Review Team's conclusions are both evidence- and judgement-based. These judgements, however, have been made drawing on a range of evidence from different sources, including those described above. Judgements have not been based on evidence from a single source – the Review Team has sought to bring together evidence from a number of different businesses or organisations, and from GLA front-line staff, policy officials and senior managers.

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