

The future of the Gangmasters Licensing Authority and the Employment Agencies Standards Inspectorate

Better regulation for worker protection – Proposal for a common position

This paper summarises the critical issues that should be of concern to the Coalition government concerning the regulatory framework for the recruitment and labour supply sector generally. The proposal seeks to establish a common position which has multi-stakeholder support, provides a level, competitive playing field for business, reduces regulatory burdens and exchequer fraud and offers greater protection for vulnerable workers through intelligence led, proportionate enforcement action.

The following factors are significant:

1. The Gangmasters Licensing Authority (GLA) has considerable resources and powers compared with other regulators in the same area, which means that there is differential enforcement between sectors. As a result of this disparity, much employment law and other regulations are enforced effectively only against businesses within the GLA licensed sector. In its report on human trafficking published on 6 May 2009, the Home Affairs Select Committee noted:

“We agree that existing employment law, the National Minimum Wage, regulations on rented accommodation and so on should be sufficient to prevent the sort of abuses highlighted by the Gangmasters Licensing Authority and UCATT – but only if they are enforced. It seems to us that, outside the Gangmasters Licensing Authority’s sectors, enforcement is at best patchy and at worst non-existent.”

2. The resources and powers available to the GLA combined with its active, intelligence-led approach contrasts in particular with the Employment Agencies Standards Inspectorate (EAS), which is generally reckoned to be an inefficient regulator relying largely on complaints. This is as brought out in the key findings of the parallel Hampton Implementation Reviews of the two bodies:

The Hampton Implementation Review Report (2009) of the GLA found:

- 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 has a good awareness of the unintended consequences of its operational decisions and takes proactive steps to minimise these
- The GLA has done well in building consensus amongst its diverse stakeholders on the best way forward with regulation
- The GLA has actively sought to minimise any unnecessary additional regulatory burdens that might have followed its licensing regime.

The Hampton Implementation Review Report (2009) of the EAS found:

- EAS’s strategy and operational systems should keep up with changes in the industry.
- Currently sanctioning options are limited. EAS has insufficient powers to address rogue businesses (i.e. no ‘stop now’ orders or administrative penalties available).
- The EAS capacity to store, analyse and share data related to business risk and non-compliance is weak.

3. The Government has stated that an extension of the Gangmasters Licensing Authority scheme is not on its agenda and that it is committed to effective, risk-based enforcement by the EAS and the government's other workplace enforcement bodies.
4. Extensive evidence demonstrates that exploitation of workers by unregulated labour providers is widespread across a number of sectors, in particular hospitality, care and construction and that further measures are required to strengthen protection of vulnerable workers' rights in these and other sectors. These high-risk sectors have been well-documented by the government, for example by BIS in its 2010 evidence to the Low Pay Commission regarding National Minimum Wage complaints in the hospitality sector, <http://berr.gov.uk/policies/employment-matters/rights/nmw/lpc> ; by Rita Donaghy in her 2009 inquiry report 'One Death is Too Many' looking at fatal accidents in the construction sector <http://www.dwp.gov.uk/publications/policy-publications/fatal-accidents-inquiry.shtml> ; and by the Treasury consultation in 2009 on false self-employment in the construction sector http://webarchive.nationalarchives.gov.uk/+http://www.hm-treasury.gov.uk/consult_false_selfemployment_construction.htm
5. Legitimate employment businesses and agencies want, and have a right to expect, a "level playing field" in order to compete fairly within the law, as do those using their services. To enable this it is essential that action is taken to prevent rogue businesses from undercutting legitimate labour providers, either through tax evasion, worker exploitation or both. An independent survey of GLA licensed labour providers by the Universities of Sheffield and Liverpool in 2008 found that 79% were in favour of the licensing regime. To this end, the industry clearly supports an intelligence-led, risk-based proportionate enforcement regime that facilitates a fair competitive trading environment.

Proposal

To achieve this fair, competitive trading environment across all sectors, whilst protecting vulnerable workers and reducing the regulatory burden on the taxpayer, the group proposes a staged process the first stage of which would be some administrative measures to make the current legal requirement more effective and during which the scale of exchequer fraud and worker exploitation in the currently unlicensed sectors should be assessed.

Stage 1

1. Functionally merging the EAS into the GLA. GLA would run EAS under its current management and intelligence-led operational processes. This can be achieved by ministerial order and requires no change to legislation.
2. Initial operation of 'GLA / EAS' to come under a Service Level Agreement between BIS and DEFRA.
3. Pay and Work Rights Helpline to come within the remit of the newly merged 'GLA / EAS'.
4. The merged GLA / EAS would continue to apply current GLA licensing and inspection procedures to businesses within the current GLA mandated sector whilst adopting a proactive, intelligence-led, proportionate approach to those employment and labour agency businesses currently working within the remit of the EAS.
5. Governance of the two bodies to be through a smaller, more strategic board, selected to provide the necessary balance of skills and expertise.

The initial stage will allow a period in which the scale of exchequer fraud and worker abuse in other sectors would be assessed.

Stage 2

1. GLA and EAS are merged into one body under the sponsorship of BIS.
2. All employment businesses and agencies not currently falling under the current GLA mandate would be required to register (for a modest annual fee) with inspections led by intelligence and identified risk (in accordance with Hampton Principles). This would require primary legislation. In the interim a voluntary registration system could be introduced, as was done for labour providers prior to the Gangmasters Licensing Act becoming law.
3. The merged body to be responsible for monitoring compliance with the Agency Worker Regulations 2010.
4. Infringements of legal requirements would result in Macrory penalties and ultimately prohibition to trade. Prohibition to be based broadly on the current GLA points-based revocation system, with 'fit and proper' trading bars available.
5. The criminal offences of trading whilst unregistered or using an unregistered employment business or agency should remain.

Advantages

1. Bringing the whole recruitment and labour supply sector currently outside the GLA mandate under a system of mandatory registration and prohibition would help to ensure the necessary conditions for legitimate business to operate and compete fairly from a secure foundation, whilst affording better protection to workers.
2. The staged approach allows a pilot period in which the scale of exchequer fraud and worker abuse in other sectors would be assessed. Sectors shown to harbour exceptional levels of exploitation, such as hospitality, care and construction, would be the first to be brought under a registration system.
3. This approach will lead to financial savings in terms of bureaucratic and administrative harmonisation whilst achieving the Government's commitment to effective, risk-based enforcement.
4. Merging GLA and EAS will reduce bureaucracy and boost efficiency by allowing one board and management team to seek to maintain common standards across the recruitment and labour supply industry.
5. A small registration fee with annual re-registration will not deter legitimate business and will offset the cost of additional enforcement activity.

This position is supported by the following organisations:

Anti-Slavery International

Association of Labour Providers

Ethical Trading Initiative

Ecumenical Council For Corporate Responsibility

Institute for Human Rights and Business

Oxfam GB

We would welcome support for this proposal from all sectors. If you wish to add your organisation to the list of supporters or for further details please email

Neill Wilkins Project Co-ordinator IHRB neill.wilkins@institutehrb.org