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## ALP Policy Paper – September 2010

# Future of the Gangmasters Licensing Authority and the Employment Agency Standards Inspectorate

### The Issue for Government

The role of the GLA and the regulatory structure for the employment sector generally should currently be an issue of concern to the Government. The following factors are significant -

1. The GLA has substantial resources and powers compared with other regulators in the same area, which means that there is differential enforcement between sectors. Many laws and regulations are enforced effectively only against businesses in the GLA licensed sector. In its report on human trafficking published on 6 May 2009, the Home Affairs Select Committee made a telling comment:-

*“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 with the Employment Agency 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. It is increasingly recognised that HMRC is ineffective in respect of enforcing the National Minimum Wage, concentrating largely on complaints and businesses that have records available to inspect. The ALP understands that this is being changed to an intelligence led approach. This is a good move both in efficiency and effectiveness, but would be further improved if the intelligence were managed centrally. The GLA already has the structure and expertise to do this.
  4. The GLA does not sit happily in DEFRA dealing as it does predominantly with BIS matters, and its governance arrangements are untenable. The commitment to abolish the Agricultural Minimum Wage will have some knock on effects on the GLA and on DEFRA's position in relation to regulation generally.
  5. 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 Employment Agency Standards inspectorate and the government's other workplace enforcement bodies. The ALP position supports this.

### **The ALP Position**

The ALP's policy position is to support labour providers that operate within the law. To enable this it is essential that action is taken to prevent businesses from undercutting legitimate labour providers either through tax evasion, worker exploitation or both.

To this end, an intelligence-led, risk-based proportionate enforcement regime is essential to facilitate a fair competitive trading environment, the so called "level playing field".

The approach below should lead to financial savings in terms of bureaucratic and administrative harmonisation whilst achieving the Government's commitment to effective, risk-based enforcement and reducing tax evasion.

The ALP suggests a possible staged approach which would include:

#### **Stage 1 – Administrative Measures**

1. Abolition of the Agricultural Minimum Wage, already announced, but brought forward to the earliest possible date.
2. Merging the EAS and the GLA. GLA to be given the power to run EAS. This can be achieved by ministerial order and requires no change to legislation.
3. Transfer of enforcement of the National Minimum Wage from HMRC to the newly merged body. This can also be achieved by ministerial order and requires no change to legislation.
4. Pay and Work Rights Helpline to come within the remit of the newly merged GLA / EAS.

5. Initial operation of EAS to come under an SLA between BIS and DEFRA. Future sponsorship shifting from DEFRA to BIS.
6. GLA to apply its current proactive, intelligence-led, proportionate approach to the EAS sector within the current legislative structure. Whilst the differential enforcement regime would continue through this period this effectively allows a pilot period in which the scale of worker abuse in other sectors can be identified and measured.
7. Governance should be through a small more strategic board selected to provide the necessary balance of skills and expertise.

## Stage 2 - Legislation

Subject to the outcomes of the two year Stage 1, this stage involves bringing the bodies together into the Employment Agency Standards Inspectorate (EAS) under BIS sponsorship.

1. Replace the current licensing system with mandatory registration for all employment businesses and agencies. There should be a small registration fee, removing the bulk of the financial burden on the current GLA regulated sector. There should be annual re-registration.
2. There should be harmonising legislation largely based on the current Gangmasters Licensing legislation but with essential amendments to ensure that enforcement is effective, risk-based and proportionate:
  - The licensing regime would be replaced by a registration and prohibition approach. Alternatively, licensing may be retained or introduced for specific sectors which demonstrated high levels of worker exploitation during the pilot.
  - In line with Hampton principles there would be no initial inspection unless GLA intelligence demonstrates that this is required.
  - Prohibition to be based broadly on the current GLA points based revocation system, with 'fit and proper' trading bars available.
  - McCrory penalties available where prohibition would be disproportionate
  - Appeals system as per the current GLA regime
  - The criminal offences of trading whilst unregistered or using an unregistered employment business or agency should remain.