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HEALTH AND SAFETY COMMISSION

Options for the merger of the Gangmaster Licensing Authority with HSE

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Issue

1. To consider the options for the future roles and structures of the Gangmaster Licensing Authority (GLA) and its Board within HSC/E, as recommended by the Hampton Report.

Timing

2. Routine

Recommendation

3. The Commission is invited to agree that:
 - The options at Annex 1 for the GLA Board and Annex 2 for the Authority are used as the basis of a public consultation exercise on the future structure of the GLA and its Board in an enhanced HSE;
 - The best option to develop in respect of the GLA Board involves the transfer of its functions to HSC, the dissolution of the Board and HSE reporting on the activities of the GLA to HSC. [Paragraph 8 C]
 - The best option to develop in respect of the GLA involves its merger within an existing HSE division e.g. Field Operations Directorate (FOD) [Paragraph 9 D]

Background

4. The Gangmasters (Licensing) Act 2004 regulates the activity of labour providers (gangmasters) and labour users in UK agriculture, and established:
 - The GLA to operate a licensing scheme, set licensing conditions and maintain a register of licensed gangmasters;
 - New offences, including operating without a licence, engaging the services of an unlicensed gangmaster and using false documentation; and
 - A penalty of up to 10 years imprisonment.

The GLA, an executive Non Departmental Public Body (NDPB) sponsored by the Department for Environment, Food and Rural Affairs (Defra), came into being on 1 April 2005. The licensing regime and the offences will take effect during 2006.

5. The GLA is regulated by a Board of 19 representative members appointed by the Secretary of State, drawn from industry and other stakeholders together with 9 ex-officio members representing departments (including HSE) with an independent part-time Chair.
6. The Hampton Report recommendation to merge the GLA in to HSE was accepted by the Government. The merger is being project managed by officials from HSE, the GLA and Defra. Merger plans have to be submitted to the Better Regulation Executive (BRE) in September 2006 for approval and mergers need to be completed by the end of March 2009. The GLA is expected to consist of approximately 50 full-time officials at the time of merger.

Argument

7. Defra Ministers have given public assurances that proposals for the implementation of Hampton affecting the department, including the merger of the GLA with HSC/E, will be the subject of a public consultation exercise, scheduled for later this year.
8. In merging the GLA within HSE there are a number of options for carrying out the current Board's functions post merger. These will need to be discussed in the consultation document, and preferred way forward suggested. The main options for the GLA Board post merger are that:
 - A. The GLA Board's functions are transferred to the Commission. The GLA Board becomes a standalone IAC reporting to the Commission.
 - B. The GLA Board's functions are transferred to the Commission. The GLA Board becomes a working group of the Agricultural IAC (AIAC).
 - C. The GLA Board functions are transferred to the Commission. The GLA Board is dissolved and HSE reports on the activities of the GLA to the Commission.

Option C is recommended because the remit of the GLA is focussed upon one sector of industry (agriculture) which already has an IAC with a working group to advise on casual, temporary and migrant workers. The GLA Board also accepted this option in principle at its meeting on 26 April.

9. The GLA currently operates from Nottingham. HSE Nottingham relocated in April 2006 and additional space to house the GLA post-merger has been negotiated with the landlord. Co-location gives rise to the following options for delivery of the GLA's functions and for its staff on merger with HSE:
 - A. The GLA is merged with the other merger bodies in a separate stand-alone division within HSE e.g. a Non Major Hazards Division reporting to the Board. The division would have independent management, reporting and enforcement processes and structures.
 - B. The GLA and its staff become a stand-alone division within HSE with its own reporting, management and enforcement arrangements and structures.

- C. The GLA is absorbed within HSE as a division/unit with its own identity e.g. the Gangmaster Licensing Unit, which is responsible for issuing licences and monitoring the performance of licence holders. The Unit manages a team of peripatetic Compliance/Enforcement officers.
- D. The GLA is merged within an existing HSE division e.g. Field Operations Directorate (FOD) with its own identity for policy and strategic functions as well as responsibilities for issuing the licences. Locally based Compliance/Enforcement Officers are managed by Divisional FOD management teams.
- E. The GLA is wholly merged within Policy Group/FOD. Policy and strategic functions are carried out by the combined Agriculture/Food Sector and Policy Branch with compliance / enforcement activities being carried out by appropriately trained and authorised FOD staff.

Option D is preferred as it replicates the model used for the Asbestos Licensing Unit and limits remote management of peripatetic enforcement and compliance officers. It also integrates the GLA into HSE without a complete loss of identity for dutyholders.

10. The options are appraised further in Annexes 1 and 2. Possible legislative routes for the transfer of the GLA Board's functions to the HSC are described in Annex 3.

Consultation

- 11. Within HSE, and with the GLA Board, the GLA, Defra and DWP.
- 12. The GLA Board meeting on 26 April discussed the options above. Although the Board, through its Chair, has written to Defra Ministers urging no changes to the GLA for a further 3 years (letter at Annex 4), it accepted that the recommended options for merger of the Board and the Authority with HSC/E were the best available. The SoS replied on 9 June 2006 reaffirming support for the merger of the GLA with HSE.

Presentation

- 13. Defra plan to undertake the consultation exercise. There will be Parliamentary interest in any proposed changes to the GLA Board's functions and structure.

Costs and Benefits

- 14. Longer-term benefits are in line with the Hampton principles.

Financial/Resource Implications for HSE

- 15. It is currently difficult to estimate the future costs to HSE. The GLA aims to be self-financing by 2010 but this is dependent upon an appropriate and sustainable licence fee structure being agreed and implemented. Current estimates are of approximately £2.5m p.a. for operational activities (to be funded by licence fee). Responsibility for enforcement, currently reserved to Defra and estimated at approximately £2m p.a. is not currently treated as an operational cost and therefore will not be recovered from the licence fees. A resource transfer will need to be sought from Defra.

16. There should be some cost savings from merger through common adoption, where practicable, of HSE-wide facilities and systems e.g. HR, payroll, IT support, finance, accommodation etc.

Environmental Implications

17. None

Other Implications/Risks

18. The implications of each option are described in the annexes.

19. GLA staff are public servants, not substantive civil servants like HSE staff. The status of the GLA staff on merger with HSE is an issue for a number of reasons including an increase (though of only 50) in the number of civil servants, HR matters and funding. Advice is being sought from the Better Regulation Executive.

20. There is also an issue that if Parliament chooses to confer these additional functions on the HSE by means of an Order under the proposed Legislative and Regulatory Reform Act or by primary legislation, HSE's statutory powers will be widened beyond the General Purposes of the 1974 Act. Likewise if the Commission were to inherit the functions of the GLA Board.

Action

21. The Commission is invited to agree to the proposals at paragraph 3.

Contact

22. Graeme Walker: HSE/GLA Merger Project Manager.

Options for the GLA Board Merger Model

Option A

The Board's role and functions are assumed by the HSC but the organisations eligible to nominate members are invited to form a new Industry Advisory Committee (IAC) to advise on issues relating to gangmasters/labour providers, gangworkers, and casual and temporary workers. Like other IACs, it would provide expert advice to the HSC. The HSC would determine the policy and be accountable to Ministers.

Benefits

- Governance structure more compatible with existing HSC/E arrangements.
- More clearly demonstrable merger between the structures.
- Transfers the decision-making responsibilities to the HSC.
- Removes parallel access to Ministers, minimising the potential for conflict between the Board, the HSC and Ministers.
- Retains a separate identity for the Board, which might placate concerns of some Board Members.

Risk

- Board Members are likely to see this as an unacceptable downgrading of their role/influence/status.
- The option would create a new IAC to tackle a single issue affecting the agricultural sector when an Agriculture IAC (AIAC) was recently reconstituted and commenced work in April. The AIAC has already identified six priorities for project work including one on Casual, Temporary and Migrant Workers. Thus there is a clear potential for duplication of effort between the respective IACs.

Option B

Similar to Option A, but in which the Board becomes a Project/Working Group of the AIAC and assumes responsibility for the wider work currently being undertaken by the Casual, Temporary and Migrant Workers Project Group.

Benefits

- As Option A, but more closely integrates the Board into HSC/E's existing governance structure.
- Removes potential duplication between the two IACs
- Maximises delivery of Hampton aims, objectives and principles, whilst retaining a separate identity for the Board.

Risks

- Presentationally and politically difficult. Is likely to be seen as even more of a downgrading of the role/influence/status of the Board.
- Organisations eligible to nominate members may/will withdraw (in protest).
- The cooperation and goodwill of important stakeholders will be lost.

Option C

The Board's role and functions are transferred to the HSC and the Board is dissolved with HSE officials bringing any policy advice to the HSC in the same way as they would with other areas of work.

Benefits

- Maximises efficiency gains.
- Is the best option to illustrate our embrace of Hampton principles as a modern regulator.
- Maximises merger / full incorporation bringing synergies and realising benefits.

Risks

- Politically very difficult.
- Could be badly received by the Chairman, and representative Board members.
- Could threaten engagement with important stakeholders, which are eligible to nominate/have nominated representative Board Members.
- Would eliminate an existing body that could provide a useful sounding board / lightning rod for HSC/E.
- Likely to generate unfavourable coverage in Parliament and the media, particularly if announced early while the GLA is still being fully established and the necessary supporting regulatory framework is still not in place

Options for the GLA Merger Model

Option A

The GLA is merged with the other merger bodies in a separate stand-alone division within HSE e.g. Non-Major Hazards Division reporting separately to the Management Board. The division would have independent management, reporting and enforcement arrangements, processes and structures.

Benefits

- Discharges the obligation to merge the GLA with HSE.
- Minimal disruption to the workings of the GLA and its staff in the short-term

Risks

- An interim but in the long-term probably unsustainable position.
- Realises some but not many / all of the Hampton aims, objectives, principles or potential benefits.
- Assumes a degree of compatibility / synergy with the other merger candidate organisations, which probably does not exist.
- Longer term would require convergence with the other merger candidate authorities.

Option B

The entire GLA staff is transferred into HSE as a separate entity/division with its own reporting and management systems and either remains in its existing premises in Nottingham or (more likely) is co-located within the new HSE Nottingham office. Peripatetic Compliance/Enforcement Officers would continue to be home based although they would be able to access HSE offices to use PACE interview rooms etc. The GLA would continue to report on its functions to the GLA Board or its replacement body.

Benefits

- Simple merger, all current staff and systems retained.
- No disruption to the emerging licensing regime.
- Limited changes required to primary and secondary legislation.
- Limited merger costs.
- Minimal disruption to GLA and HSE staff.

Risks

- Does not deliver the Hampton aims, objectives, principles or benefits.
- No efficiency gains from using common resources e.g. accommodation, HR, etc.
- Little integration/interaction with/from other parts of HSE.

Option C

The GLA is incorporated into HSE by creating a new division or unit e.g. Gangmaster Licensing Division. Its HQ functions are co-located at the HSE office in Nottingham. Licences to be issued by the unit, which will also set policy and manage operational and

enforcement activities. Peripatetic staff are based at home or in regional/local HSE offices and are managed by the unit.

Benefits

- Identifiable resource.
- Limited changes required to primary legislation.
- Some efficiency gains from using shared accommodation, logistics etc.

Risks

- Possible disruption to licensing regime during move.
- Limited delivery of Hampton aims, objectives or principles.
- Some disruption to GLA staff.

Option D

The GLA becomes part of an existing HSE division e.g. FOD but remains an identifiable resource e.g. a Gangmaster Licensing Unit. HQ functions and licensing regime co-located at HSE Nottingham office. Peripatetic officers working from home or based in FOD regional / local offices under local FOD management.

Benefits

- Similarities with current HSE model for the Asbestos Licensing Unit.
- Consistent with Hampton principles for inspection and enforcement.
- Efficiency gains from co-location and local management of peripatetic staff.
- Identifiable resource for planning and delivery.

Risks

- Changes required to primary and secondary legislation.
- Greater disruption to GLA staff than option A – changes to management structures, reporting arrangements etc.

Option E

The GLA is merged completely into existing HSE divisions and structures e.g. PG and FOD. Policy and strategic functions of the GLA are for example, absorbed into the combined Agriculture /Food Sector and Policy Branch in PG; with compliance / enforcement functions being carried out by FOD divisional staff. The licensing regime is held and managed centrally or devolved to divisional / local offices to be administered within their respective geographical areas.

Benefits

- Fully delivers Hampton aims, objectives, principles and benefits.

Risks

- Substantive changes required to primary and secondary legislation as the GLA will effectively be abolished.
- Current authorisations under HSWA/FEPA/ELCI will need to be amended or an additional warrant will need to be issued to staff under the G(L)A 2004.

- The work is fundamentally different to HSE's core business. HSE staff would require training.
- Additional resource required to deliver compliance / enforcement work would be a burden on current HSE frontline activities.
- Dilutes the effort directed to gangmaster activity. Staff may be allocated to other HSE priorities and therefore would not support the G(L)A 2004.
- Devolving the licence regime may cause disruptions during start-up and transfer of functions.
- Implications for current GLA staff in post.
- No identifiable resource for planning and monitoring of delivery.

Conclusions

Option A is probably unacceptable politically. It delivers few (if any) of the Hampton aims, objectives or principles of better regulation, assumes levels of compatibility with the other merger candidate organisations which are probably unjustified and in the longer term is not sustainable.

Option B cannot be considered a long-term solution as it does not fit with the Hampton and would not deliver the outcomes expected by the Better Regulation Executive. The benefits are grossly outweighed by the risks. Under this option, the GLA would effectively remain a separate entity within HSE.

Options C and D are the most attractive in terms of delivering Hampton and efficiency gains/benefits realisation whilst not jeopardising the licensing regime.

Option D is a familiar arrangement. Tried and tested in the form of the Asbestos Licensing unit, is known to be capable and efficient, fit-for-purpose licensing regime.

Option E again would not be acceptable to the GLA Board or the GLA itself. Although the Hampton principles are met in full there are substantial risks, which cannot be resolved in the short term. To mitigate potential disruption to the licensing regime this option would require a phased approach involving several stages, over a number of months or possibly, years.

There could be an argument to initially merge the GLA within HSE under Option B - as an interim measure – moving in the longer term to Option E.

Legislative routes for transfer of functions from the GLA to HSE

Short-term reassignment of GLA functions

This could be done by means of an Agency Agreement under section 13(1)(b) HSWA by which, the Commission could agree to perform the GLA's functions provided that in the opinion of the SoS they could "appropriately be performed...in connection with any of the [it's] functions". It would be a policy and practical judgement as to whether that condition could be satisfied.

Assuming the SoS could give that opinion, and an Agency Agreement were to be put in place, under section 11(4)(b) the HSC could direct the HSE to carry these out on the HSC's behalf: in effect a form of double-delegation. However as the Notes on Clauses to HSWA make clear, this would have the effect of making the HSC and HSE, the GLA's agent. Section 13(1)(b) was primarily intended as a means of helping out other organisations, providing them with a statutory means of using the expertise of HSE staff in support of their work. In addition, again as the Notes on Clauses make clear, HSE staff carrying out GLA work under this route would not be able to use HSWA powers.

Section 13 HSWA is not thought to provide an appropriate vehicle for merger.

Formal merger

Section 15 HSWA can be used to make Regulations for the general purposes of Part 1 HSWA. However even if the merger could be considered to be for the general purposes of the 1974 Act, Section 15 Regulations cannot modify legislation made after 1974 unless that legislation refers to "the relevant statutory provisions".

Section 15 HSWA is not thought to provide an appropriate vehicle for merger.

Conclusion

No powers are available to effect a formal merger under current legislation.

Regulatory Reform Order under the Legislative and Regulatory Reform Bill

The Legislative and Regulatory Reform Bill is currently making its way through Parliament. In its current format the Bill would make provision for an Order to amend the GLA legislation by substituting HSE for the GLA throughout. Supplementary and consequential provisions would need to be made to allow for continuity in terms of legal proceedings etc. By way of example, the Nuclear Installations Act 1965 etc (Repeals and Modifications) Regulations 1974 amended the Nuclear Installations Act 1965 substituting HSE for the SoS for Energy.

It is proposed that a Regulatory Reform Order should be the legislative route to merger.

Response from the GLA Board Meeting of 26 April on Merger Options

The Authority agreed unanimously:

- 1) To reaffirm its determination to ensure that it achieves the objectives given by its present Act, to curb exploitation in the agriculture, food processing and shellfish gathering sectors;
- 2) To note that management could easily be distracted by the need to plan for a merger with the Health & Safety Executive but expresses confidence in its senior management and staff to deliver these objectives;
- 3) To note with pleasure the invitation from the Serious and Organised Crime Agency to become one of its operational partners;
- 4) To urge the Secretary of State:
 - a) To recognise that the Authority's success so far has been to no small extent based on the excellent work done by those representing all parts of the agriculture, food processing and shellfish gathering sectors, which has been continued by the representatives of those sectors who now sit on the Authority;
 - b) To assure the Authority that she will bear in mind the outcome of its experience over the first three years, when that is made available to her, especially if there is evidence to show that its remit should be extended to labour providers operating in other sectors; and
 - c) To assure the Authority that there will be no dilution of the resource available to achieve its objectives as a result of any change resulting from the implementation of the Hampton proposals.
- 5) To appreciate that its senior management will need to work with the Health & Safety Executive on the Hampton proposals; and
- 6) To confirm the importance of the public consultation on the outcome of this work.