

Health and Safety Commission Paper		HSC/07/65	
Meeting Date:	4 September 2007	Open Gov. Status:	Fully Open
Type of Paper:	Above the line	Paper File Ref:	
Exemptions:	Annex 1 – Formulation of government policy etc. (FOI Act Section 35)		

HEALTH AND SAFETY COMMISSION

HSE/GLA Merger - Draft Consultation Document

A Paper by Graeme Walker and David Butter

Board member lead: Giles Denham

Cleared by Jonathan Rees on 13 August 2007

Cleared by Geoffrey Podger on 16 August 2007

Issue

1. It is proposed the merger of the Gangmasters Licensing Authority (GLA) with HSE be effected by a Legislative Reform Order (LRO) under the Legislative and Regulatory Reform Act 2006 (LRRRA). This paper introduces the draft consultation document required by Sections 12 and 13 of the LRRRA.

Timing

2. For discussion by the Commission on 4 September 2007.

Recommendation

3. That the Commission agrees:
 - a. The draft consultation document – including the LRO (Annex 1).
 - b. To submit the draft consultation document to Defra Ministers to take forward the consultation exercise.
 - c. To continue to press Defra to fund the one off costs associated with the merger.

Background

4. As the Commission is aware from the HSC/E merger proposal, HSE cannot assume the lead responsibility for laying the LRO before Parliament and its passage through the Scrutiny Committees. Defra Ministers have agreed to lead the public consultation on the LRO and the merger proposals, and on the subsequent Parliamentary scrutiny procedure prescribed by the LRRRA.
5. Commissioners have previously discussed the options for the GLA's Board and for the Authority post-merger on 17 October 2006 (paper HSC/06/81).

6. The consultation document and the LRO (at Annex 1) have been drafted on the basis of the decisions taken by the HSC on the merger options.
7. It is proposed the consultation document be issued jointly with Defra in late October/ early November 2007. HSE will collate the responses and report to Ministers and HSC on the public consultation exercise. The consultation document has been designed to make use of bespoke data collection and analysis software.
8. Questions 1 to 6 cover the preconditions set out in Section 3 of the LRRRA. These are required, standard questions. The Minister has to be able to demonstrate compliance with these preconditions in advance of Parliamentary scrutiny.
9. Even if the preconditions are met the Government has given an undertaking not to deliver “highly controversial” proposals by way of LRO – this might include proposals opposed by a majority of stakeholders. If the merger was considered to be “highly controversial” and Ministers confirmed their willingness to proceed, the merger could only then be effected by primary legislation i.e. a Bill.
10. Given foreseeable stakeholder opposition to the merger it is likely the LRO will be subject to the super affirmative resolution procedure provided by Sections 15 and 18 of the LRRRA. We are working with Press Office to develop a communications strategy.

Argument

11. The Commission previously agreed to accept responsibility for the GLA Board’s statutory and governance functions and to be accountable to Ministers for implementation of the legislation and licensing regime (paper HSC/06/81 refers).
12. To minimise risk to the licensing regime (and the reputational risk to HSE) it is proposed the GLA be migrated into HSE as a stand-alone division of FOD. Staff would retain their current posts and roles, working to existing operational and other processes. The GLA Division would be headed up at SCS level, accountable to the Director of FOD.
13. On the advice of Parliamentary Counsel, the LRO seeks to abolish the GLA as a body corporate and to merge it with the HSE as an executive office. The term “executive office” does not denote any distinct legal personality and the GLA will therefore simply be a constituent part of the HSE.
14. Articles 2 and 3 of the LRO (attached as Annex B to the consultation document) address the changes required to primary legislation i.e. to the Health and Safety at Work etc Act 1974 and to the Gangmasters (Licensing) Act 2004. The principal changes are summarised at Annex 2.
15. Further work is in hand with Legal Adviser’s Office to incorporate necessary consequential changes to the Gangmasters (Licensing Authority) Regulations 2005, freestanding provisions to address transfers of property, staff, liability etc. and minor

textual amendments to the 2004 Act. This work will be completed by the time the consultation document is published in the autumn.

16. It is proposed that within nine months of the merger i.e. by the end of 2009, the new GLA division be progressively be aligned with relevant HSE/FOD systems and processes (including some change of roles) where appropriate and relevant.
17. It is further proposed that the division be subject to an evidence-based review of its functions, structures and processes after the first three years of operation within HSE i.e. after April 2012.
18. In the interests of transparency, the consultation document includes details of the proposed administrative arrangements after merger.

Consultation

19. With Defra, the Gangmasters Licensing Authority and within HSE (Board members, LAO, PFPD, COSAS and FOD).

Presentation

20. Upon approval by the Commission the consultation document will be forwarded to Defra Ministers to initiate the public consultation exercise.
21. Defra Ministers have seen the draft CD and submission and have asked that it be amended specifically to include the “do nothing” option.

Costs and Benefits

22. The GLA is funded by approximately £1.3M of licence fee income and £2M grant-in-aid from Defra to cover enforcement activities. In addition Defra has ring fenced a further £450k as a reserve for external legal support to cover the conduct of cases in court – any funding transfer would be based on operational experience and the number of cases reaching the courts.
23. Other than one-off transition costs of approximately £370k (for IT start-up and refurbishment of available accommodation at HSE’s Nottingham office) the GLA merger will be cost neutral to HSE. This figure is a worst case scenario if Defra was unable to fund relocation and IT start up costs.
24. Defra is currently considering providing a budget to cover all the one-off costs associated with the merger. Further information and estimates of the costs involved are set out at para.14 of the Initial Impact Assessment (Annex E of the consultation document refers). A decision is not expected before mid December 2007.
25. Once HSE has gained experience of the licensing regime there may be scope for savings. To that end it is proposed to review the operation of the GLA within HSE after three years i.e. around April 2012.

Financial/Resource Implications for HSE

26. The licensing regime is expected to be self-financing (as required by Treasury guidelines) by 2010. HSE is to seek a transfer of funds from Defra to cover enforcement activity, which is currently funded at £2M per annum.
27. Provisional estimates for the 2008/09-work year suggest that the GLA will cost £3.3M to run (funded as described in para.21). It is anticipated that the costs in 2009/10 and beyond will be of the same order plus an allowance for inflation.
28. Implementing the merger will involve one off costs of some £725,000 (this includes the £370k described at para. 22) with the bulk of this being incurred in 2008/09. These costs are detailed at para.14 of the Initial Impact Assessment at Annex E. No specific cost savings are envisaged, with any post merger non-operational staff savings being used to support enforcement activities over the period to April 2012. No budget has been allocated by HSE and the funding bid for this is currently being considered against competing Defra priorities. If funding is not confirmed, we recommend HSC continues to press Defra to cover the necessary one off costs.

Other Implications

29. Depending on the progress of the proposed merger of the HSC with HSE, changes may need to be made to the LRO to reflect new governance arrangements introduced prior to April 2009.

Next Steps

30. That the Commission agree the recommendations at paragraph 3 and that the consultation document goes forward for Defra ministers to initiate the public consultation exercise.

SUMMARY OF CHANGES PROPOSED TO PRIMARY LEGISLATION

It is proposed:

1. To abolish the Gangmasters Licensing Authority (GLA) as a body corporate as constituted under Section 1 of the 2004 Act and to merge it with the HSE, in line with Hampton recommendations. The effect of the draft article, is to repeal and replace Section 1 of the 2004 Act thereby conferring responsibility on the Executive for those functions that are currently the responsibility of the GLA. **[Article 3 and Schedule 1(4)]**
2. That post merger, the GLA will become part of the HSE (the Executive); specifically it will be expressed to be an executive office of HSE in a new provision (Section 10A) to be inserted in the 1974 Act. **[Article 4]**
3. To expand and amend the “general purposes” set out in Section 1 of the 1974 Act to allow the Executive to exercise its new gangmasters functions. **[Schedule 1(1)]**
4. To place a duty on (and allow) the Executive to submit proposals to the Secretary of State as required and from time-to-time, for making regulations in relation to gangmasters. **[Schedule 1(2)]**
5. To allow the Executive to exercise jurisdiction over Northern Ireland in respect of gangmasters functions, consistent with the way in which the GLA currently operates. **[Schedule 1(3)]**
N.B. This as an exception to the general rule that the Executive’s remit is limited to Great Britain.
6. To allow staff, property etc. to be transferred from the GLA to HSE. **[Schedule 2]**
7. To revoke the Gangmaster (Licensing Authority) Regulations 2005 in their entirety. **[Schedule 1(5)]**
8. To replicate the functions with respect to licensing and the register of licences currently described in Regulation 12 of the Gangmaster (Licensing Authority) Regulations 2005 in a new Section 9A in the 2004 Act. **[Article 6]**
9. Further work is required to incorporate minor textual amendments to the 2004 Act, e.g. to replace references to the Authority with references to the Executive. These drafting amendments will be completed by LAO before the consultation document is forwarded to Defra Ministers.
10. The LRO may be subject to further changes following further review by Parliamentary Council.