

**EXPLANATORY MEMORANDUM TO**  
**THE GANGMASTERS (LICENSING AUTHORITY) REGULATIONS 2005**

**2005 No. 448**

**1.** This explanatory memorandum has been prepared by The Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

**2. Description**

2.1 The Regulations set up the Gangmasters Licensing Authority which will licence gangmasters operating in areas covered by the Gangmasters (Licensing) Act 2004. The Regulations require the Authority to have a Board to direct its affairs and deal in particular with membership of the Board, tenure of office of Board members, proceedings of the Board, establishment of Committees and Liaison groups, the employment of staff by the Authority, and the production of accounts and reports. The regulations also specify the principles to which the Authority must have regard when determining the criteria for assessing the fitness of any person to be the holder of a licence (or engaged by the holder of a licence and named or otherwise specified in a licence) and the licence conditions.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None

**4. Legislative Background**

4.1 The Gangmasters (Licensing Authority) Regulations are made under the Gangmasters (Licensing) Act 2004. The primary objective of the 2004 Act is to curb the exploitative and sometimes illegal activities of gangmasters by introducing licensing of gangmasters operating in agriculture, shellfish gathering and associated processing and packaging activities. The Act provided for the establishment of the Gangmasters Licensing Authority to operate the new licence arrangements. Section 1(5) of the Act gave the Secretary of State the power to make regulations to make provisions as to:

- the status and constitution of the Authority
- the appointment of members
- the payment of remuneration and allowances to its members, and
- such other matters in connection with the establishment and operation as he thinks fit..

The Gangmasters (Licensing Authority) Regulations are made under section 1(5) of the 2004 Act.

4.2 This is the first of a series of Regulations to be made under the 2004 Act. Defra will be responsible for making:

- The Gangmasters (Exclusions) Regulations (excluding certain work from the scope of the Act and specifying circumstances in which a licence is not required);
- The Gangmasters (Appeals) Regulations (providing an appeal mechanism for gangmasters whose application for a licence is rejected);
- Regulations making provisions as to what constitutes “reasonable steps” which a person should take to satisfy himself that a gangmaster was acting under the authority of a valid licence.

The Authority will be responsible for making a Rules Order (in connection with the licensing of persons acting as gangmasters)

## **5. Extent**

5.1 This instrument applies to all of the United Kingdom

## **6. European Convention on Human Rights**

6.1 In the view of the Secretary of State for Environment, Food and Rural Affairs, the Rt Honourable Margaret Beckett MP, the provisions of the Gangmasters (Licensing Authority) Regulations are compatible with the Convention Rights, as defined in section 1 of the Human Rights Act 1998.

## **7. Policy background**

7.1 The Government supported Jim Sheridan's Private Member's Gangmasters (Licensing) Bill, introduced into Parliament in 2003 and intended to curb the exploitative activities of Gangmasters operating in certain areas. While some gangmasters operating in this area run reputable businesses it is clear that many operate illegally and exploit their workforce. The Bill attracted cross party support and received Royal Assent on 8 July 2004.

7.2 The Act introduces a licensing scheme for gangmasters supplying labour to the agriculture, shellfish and closely related produce packing and processing sectors. The Gangmasters Licensing Authority is given responsibility for the introduction and operation of the new licensing arrangements. It is anticipated that the issue of a licence will be dependent on a gangmaster demonstrating that his business is complying with general employment law (including immigration and taxation legislation). Secondary Government objectives are to:

- reduce exchequer fraud and various other forms of non-compliance often associated with abuse of workers by businesses in this sector
- increase exchequer revenues by promoting employment of legitimate workers
- promote fair competition amongst labour providers.

7.3 The Gangmasters Licensing Authority cannot come into being as a legal entity and commence its work until the Gangmasters (Licensing Authority) Regulations come into force. This is because the regulations establish the status and constitution of the Authority, the appointment of members, payment of remuneration and allowances to members and matters relating to its operation.

7.4 The Gangmasters (Licensing) Act attracted a considerable amount of publicity but there has been little public interest in the draft Gangmasters (Licensing Authority) Regulations. This contrasts with the keen interest in the Regulations shown by the key stakeholder organisations who will be nominating people to serve on the Authority.

7.5 Paragraphs 21.1 to 21.3 in the Regulatory Impact Assessment (see paragraph 8.1 below) summarise the responses received to the consultation on the draft Regulations. A full summary of the responses is on the internet at:

<http://www.defra.gov.uk/corporate/consult/gangmaster-reg/index.htm>

## **8. Impact**

8.1 A Regulatory Impact Assessment is attached to this memorandum

## **9. Contact**

**9.1** Geoff Webdale at the Department for Environment, Food and Rural Affairs  
Tel: 020 7238 5755] or e-mail: [Geoff.R.Webdale@defra.gsi.gov.uk](mailto:Geoff.R.Webdale@defra.gsi.gov.uk) can answer any queries  
regarding the instrument.

## **THE GANGMASTERS (LICENSING AUTHORITY) REGULATIONS - FULL REGULATORY IMPACT ASSESSMENT**

### **1. Executive Summary**

1.1 This Regulatory Impact Assessment assesses the impact of the Gangmasters (Licensing Authority) Regulations. These Regulations are being made under sections 1(5) and 25(2) of the Gangmasters (Licensing) Act 2004.

1.2 The 2004 Act introduces licensing for gangmasters operating in agriculture, shellfish gathering and the associated food processing and packaging sectors with a view to curbing the exploitative activities of such gangmasters. It establishes the Gangmasters Licensing Authority which will be given responsibility for the introduction and operation of the new licensing arrangements. A separate Regulatory Impact Assessment on the Act, which takes account of the establishment of a Licensing Authority, was published on 17 May 2004.

1.3 These Regulations are limited in scope and have little impact on the cost of the licensing scheme or the regulatory burden it introduces. They concern the status and constitution of the Authority, the appointment of members, payment of remuneration and allowances to its members, and other matters in connection with its establishment and operation. Under the Regulations, the operation of the Authority will be overseen by a Board with an independent chairman appointed by the Secretary of State. There will be 19 representative members nominated by the organisations specified in Schedule 1 to the Regulations and 9 ex-officio members from government departments specified in Schedule 2. The Board will be responsible for ensuring the Authority discharges the functions given to it by the 2004 Act.

1.4 The only cost attributable to these Regulations which was not included in the Regulatory Impact Assessment on the Act, is the cost arising from the payment in respect of loss of earnings, travel and subsistence to Board members (other than the chairman) and to liaison group members when attending Board, committee or liaison group meetings (as appropriate) and to people invited to attend a Board meeting or a committee meeting. It is estimated that this will amount to £137,360 over the first five years. On the assumption that 9,000 licences are issued this will add some £15.26 to a licence costing in the region of £1,750 to £2,250. If only 2,250 licences are issued, this figure will rise to £61.05.

### **2. Title of Regulatory Proposal**

2.1 The Gangmasters (Licensing Authority) Regulations made under sections 1 (5) and 25(2) of the Gangmasters (Licensing) Act 2004.

### **3. Background**

3.1 The Gangmasters (Licensing) Act 2004 received Royal Assent on 8 July 2004. The Act's primary objective is to curb the exploitative activities of gangmasters by introducing licensing of gangmasters operating in agriculture, shellfish gathering and associated processing and packaging activities. While the Bill was before Parliament, discussions took place between stakeholders and Defra Ministers on the design and operation of the licensing arrangements and the way in which those arrangements would be enforced. Various options were considered. All involved agreed that a statutory licensing authority should be established and that there should be a high degree of stakeholder involvement in the operation of the

licensing arrangements. It was also agreed that the licensing authority should be responsible for ensuring compliance with the conditions attached to a licence and that the Government should enforce the new criminal offences created under the Act. The Act therefore provided for the establishment of the Gangmasters Licensing Authority to operate the new licensing arrangements.

- 3.2 Section 1(2) of the Act states that the functions of the Authority shall be:
- a) to carry out the functions relating to licensing that are conferred on it by this Act,
  - b) to ensure the carrying out of such inspections as it considers necessary of persons holding licences under this Act,
  - c) to keep under review generally the activities of persons acting as gangmasters,
  - d) to supply information held by it to specified persons in accordance with the provisions of this act,
  - e) to keep under review the operation of this Act.

The Secretary of State has the power under section 1(2)(f) to make regulations giving the Authority other functions. The Authority has the power to make such rules as it thinks fit in connection with the licensing of persons acting as gangmasters. Rules will have statutory effect and will be subject to full consultation and Parliamentary scrutiny at the appropriate time.

3.3 Section 1(5) of the Act gives the Secretary of State the power to make regulations to make provision as to:

- a) the status and constitution of the Authority,
- b) the appointment of its members,
- c) the payment of remuneration and allowances to its members, and
- d) such other matters in connection with the establishment and operation as he thinks fit.

3.4 Section 2 allows the Secretary of State to give the Authority specific directions in relation to the way it carries out its functions.

3.5 The Final Regulatory Impact Assessment on the 2004 Act (published on 17 May 2004) considered the costs of establishing and operating a licensing system for gangmasters. The assessment was based on the assumption that an Authority would be set up and an estimate was made of the likely running costs. These costs are referred to briefly in paragraphs 10.2 and 10.3 below but are not reconsidered in depth. The present Regulatory Impact Assessment concentrates on the specific impact which the Gangmasters (Licensing Authority) Regulations will have.

## **Objectives**

4.1 The objective of the Gangmasters (Licensing Authority) Regulations is to establish a procedural framework which will:

- allow the Authority to work effectively;
- ensure that the gangmaster licensing arrangements attract the support of the key stakeholders;
- require the Authority to act fairly when undertaking its licensing responsibilities;

- require the Authority to make the register of licensed gangmasters available to the public at all reasonable times, free of charge.

## **5. Risk assessment**

5.1 Until regulations are made under section 1(5) of the Gangmasters (Licensing) Act 2004, the Gangmasters Licensing Authority cannot come into being. The 2004 Act made the Authority responsible for setting up and operating the licensing arrangements. Therefore, failure to make the Regulations would thwart the intention of the Act.

5.2 If the Regulations do not reflect the agreement entered into between Ministers and the majority of the key stakeholders while the Gangmasters Licensing Bill was being debated in Parliament, there is a risk that some stakeholders will not be committed to the licensing arrangements introduced by the Authority.

## **6. Options**

6.1 The responses to the consultation document (see para 21.1 – 21.3) were concentrated on two important and closely linked areas, membership of the Board and the need for mandatory stakeholder liaison groups. The Regulations are constrained by the provisions in the Act and, to some extent, standard procedures contained in guidance regarding the governance and operation of Non-Departmental Public Bodies. However, in these two areas different models can be considered. To gain additional information, discussions took place with the Security Industry Authority, the Gaming Board of Great Britain and the Gas Worker Registration Scheme (CORGI). These suggested that the challenge faced by each organisation was different. Consequently in each case the choice of governance structure reflected the needs of the sector being regulated.

### ***Option 1 A large representative Board***

6.2 This is to a large extent the option set out in the consultation document, with a Board consisting of nominees put forward by stakeholder organisations designated in the Regulations, under an independent chairman. It is proposed that officials from the specified Government Departments should attend as ex-officio members (rather than representational members). This approach would bring about the high degree of stakeholder input necessary to ensure the successful introduction of licensing. The involvement of Government representatives at Board level would also help ensure a strong Government commitment to enforcement. All members, once appointed, would be expected to act at all times in the best interests of the Authority. It is suggested that with a high degree of stakeholder involvement at Board level, the Board should be given the power to establish liaison groups but that they should not be mandatory.

### ***Option 2 A small to medium sized Board selected by open competition***

6.3 This option would involve the establishment of a small executive Board of 5 – 12 members all appointed by open competition following the standard Office of the Commissioner for Public Appointments procedures. This is the model employed by several NDPBs, including most notably (given the similarity of its functions) the Security Industry Authority. It is assumed to work well. Appointment would be based on personal expertise and members would not act as representatives of any specific interest group. It would be necessary to draw on a diverse range of expertise to ensure that the Board could take fully informed decisions. The Secretary of State would be responsible for ensuring that Board members, taken together, provided adequate expertise and were representative of the stakeholder community. “Adequate expertise” might include experience – over the Board as

whole - of worker issues, providing labour, using labour and enforcing legislation as well as specific professional expertise (e.g. finance, previous Board membership). Applicants would be required to indicate which area of expertise they could provide and they might be invited to indicate whether they had the endorsement of any particular organisation. To support the Board, non-voting members could be co-opted at the Board's discretion. Such a Board might be supported by one or more mandatory stakeholder liaison groups.

### ***Option 3      A tripartite Board***

6.4      The tripartite option envisages a representative Board whose membership would be based on broad constituencies of interest most affected by the provisions of the Act (i.e. workers, the business community and the Government). Each group would have a maximum of six members drawn from the following stakeholder areas:

- Labour and Community Representatives grouping involving organisations representing workers and the community
- Labour Users and Providers group representing the business community i.e. those representing labour users (employers/producers) and labour providers
- Government group comprising members from key government departments and devolved government

Under this model the Board could bring in additional non-voting members. The Board would be supported by up to four mandatory liaison groups. We are unaware of any precedent for such a tripartite arrangement involving Government representatives, although the Agricultural Wages Board follows a not dissimilar structure, with the three components comprising employer representatives, employee representatives and independent members.

### ***Option 4      A Board with more than half the members appointed by open competition and Government representatives would attend in a non-voting capacity.***

6.5      Under this option at least half the Board members would be appointed by open competition, with the balance nominated by stakeholder organisations. It is envisaged that the Board would comprise:

- a chairman appointed by open competition;
- seven nominated members, from the stakeholder organisations (i.e. the Transport and General Workers Union or Trades Union Congress; the National Farmers' Union; the Association of Labour Providers or the Recruitment and Employment Confederation; the British Retail Consortium; the Fresh Produce Consortium; the Food and Drink Federation; the Shellfish Association of Great Britain);
- eight open competition members (in addition to the chairman) each with expertise in at least one of the following areas: worker rights; recruitment and labour supply, enforcement, finance.

6.6      Government officials would attend in a non-voting capacity. This approach would reduce the size of the Board, but increase the need for mandatory liaison groups.

### **Discussion on the benefits and costs of the four options**

6.7      **Option 1, a large representative Board**, may find it difficult to reach agreement on issues but the regulations provide for decisions to be taken by a majority vote. This should ensure that the introduction of licensing is not delayed. This possible disadvantage is more than outweighed by the high degree of stakeholder involvement which is considered essential

in maintaining the co-operation and involvement of all stakeholders, thus ensuring the successful introduction and operation of the licensing arrangements. In this situation it is not necessary to make stakeholder liaison groups mandatory.

**6.8 Options 2 (a small open-competition Board) and 4 (more than half members selected by open competition)** would both give rise to Boards comprising a small number of independent executives. This would facilitate smooth running and decision making. However, both options either lack or have much reduced stakeholder involvement. There is a risk that a small Board might lack expertise in some areas and, more importantly there is concern that stakeholders who are not involved by nominating a representative member to the Board might seek to undermine the Authority. It is of overriding importance that the Authority has the support of all the key stakeholders.

**6.9 Option 3, a tripartite Board,** meets the involvement of stakeholders criteria but there is concern that the Government group might be placed in the position of arbitrator, as is the case of the independent members of the tripartite Agricultural Wages Board.

**6.10** Paragraphs 10.4 to 10.6 below, consider the costs directly attributable to the Gangmasters (Licensing Authority) Regulations in some detail. As paragraph 10.4 explains, the only direct cost stems from the decision to provide for the payments for loss of earnings, travel and subsistence to people who sacrifice a day's income in order to attend meetings. This would apply which ever option is adopted. Table 1 below estimates the number of people who would be likely to be entitled to loss of earnings etc under each option. It is assumed that half of the representative members / liaison group members and some 90% of open competition members would be entitled to claim (the remainder being paid officials). Any people invited to attend a Board or committee meeting would be entitled to claim. Any costings can only be very tentative because it is not known how many people will, in practice, claim loss of earnings etc and the number of committees and stakeholder liaison groups is entirely a matter for the Authority.

**Table 6. 1**

Option	Representative / Open Competition Board members	Board Members claiming	Number of liaison groups	Total number of members on each liaison group	Members on each liaison group claiming	People invited to attend Board / Committee meetings
Option 1	19 / 0	10 / 0	2	14	7	2 / 1
Option 2	0 / 10	0 / 9	2	14	7	2 / 1
Option 3	12 / 0	6 / 0	4	14	7	2 / 1
Option 4	7 / 8	4 / 7	3	14	7	2 / 1

**6.11** Assuming that under each option:

- the Board meets eight times in the first year and four times a year thereafter;
- there are two committees on each of which half of the representative / open competition Board members serve, including half of those who claim loss of earnings, travel and subsistence expenses, and each committee meets four times a year;
- each liaison group meets 4 times a year
- Board and liaison group members are not paid for any work done between meetings
- each qualifying member claims £170 per meeting (based on claims submitted by representative members of the Agricultural Wages Board over the last four months of 2004)

the costs under each can be estimated.



6.12 Table 2 is based on the data in Table 1 and the assumptions in paragraph 6.11. These data are used to calculate the total number of claims by members of the Board, its committees and liaison groups plus claims from people invited to attend Board and committee meetings, over the first five years and the total cost of the claims. A five year period is used so that direct comparison can be made with the Regulatory Impact Assessment on the Act.

**Table 6. 2**

	Claims by Board members and people invited to attend Board meetings (A)	Claims by committee members and people invited to attend (B)	Claims by Liaison group members ( C )	Total cost of claims over first 5 years (A+B+C)x£170
Option 1	288	240	280	137,360
Option 2	264	200	280	126,480
Option 3	192	160	560	155,040
Option 4	312	240	420	165,240

6.13 Table 2 suggests that the costs of the four options are not significantly different. **Option 2**, a small to medium sized Board selected by open competition would be the cheapest option, provided it established no more than two stakeholder liaison groups. **Options 3 and 4** would be the most expensive because it is suggested that the in these cases the Board would establish, respectively four and three stakeholder liaison groups. The estimate suggests that **option 1**, a large representative Board, the preferred option on policy grounds, would be some £11,000 more expensive than the cheapest option, over a five year period. The high degree of stakeholder commitment will outweigh the additional costs involved.

6.14 **Ministers have concluded** that a large representative Board (Option 1), along the lines originally proposed, is essential during the period when the licensing arrangements are being developed. Option 1 has therefore been adopted. Ministers will ensure that the composition and working of the Board are reviewed after three years.

6.15 **The remainder of this Regulatory Impact Assessment deals solely with the draft Gangmasters (Licensing Authority) Regulations which incorporate Option 1.** An outline of the revised Regulations, with substantive changes to original proposals highlighted, is at Appendix 1. The provisions in the Private Security Industry Act 2001 which established the Security Industry Authority were examined before the Gangmasters (Licensing Authority) Regulations were drafted and care was taken to ensure that the provisions were in line with requirements applying to Non-Departmental Public Bodies.

## **7. Benefits**

7.1 The proposed approach has the following benefits:

- Strong stakeholder representation and involvement
- Local and Central Government involvement
- Good links with enforcement agencies
- Strong stakeholder and political support

## **8. Disadvantages**

8.1 The following disadvantages have been identified:

- A Board comprising some 28 members representing different stakeholders might find it difficult to reach decisions by consensus and for this reason the Regulations provide for decisions to be taken by a majority vote.

- This is not the cheapest option but as paragraph 10.6 shows, the cost is not significant in the context of overall licence fee levels.

## **9. Issues of equity and fairness**

9.1 The involvement of key stakeholder interests at every level in relation to the day-to-day operation and management of the Authority will ensure that a fair balance is struck between the interests of the key stakeholders involved or affected. Consideration was given to any impact which the Regulations might have in terms of race and no impact was identified. (Paragraph 16.1 considers the discriminatory issues in general terms.)

## **10. Costs**

### ***Compliance costs***

10.1 The introduction of licensing and the effective enforcement of the new arrangements will have compliance cost implications for labour providers who are currently operating illegally. They will need to pay workers correctly and comply with existing legislation relating to employment, tax etc. These issues were considered in the Regulatory Impact Assessment of the 2004 Act and are not considered further.

### ***Other costs***

10.2 It is intended that the Gangmasters Licensing Authority should be self-financing through the licence fee income. Consequently the cost of operating the Gangmasters Licensing Authority will have a direct bearing on the fee that labour providers will be charged to obtain a licence. The Government has agreed to bear the initial cost of setting up the Authority. Once it is functioning, the Authority's running costs, the cost of issuing licences, revoking and transferring licences, maintaining a register and the cost of undertaking audits will be recouped through the charge made for licences. The licence fee will also be expected to meet the cost of compliance checks to ensure licence holders comply with the terms of their licence. The Authority will be required to set a licence fee, in consultation with the Secretary of State, that will meet these objectives. Defra will cover any shortfall in revenue against an agreed budget.

10.3 The Regulatory Impact Assessment underpinning the 2004 Act estimated that the cost of establishing and operating the Gangmasters Licensing Authority will be between £16m and £21m over the period to March 2009. (The latest estimate of some £19m falls within that range.) If 9,000 licence applications (4,000 initial applications, subsequent applications from new gangmasters and the first round of renewals) are dealt with over this period, the average licence fee would be between £1,750 and £2,250 i.e. a cost of some £585 to £750 per year. This estimate assumes the establishment of a Board along the lines of that envisaged in Option 1.

10.4 The impact of the Gangmasters (Licensing Authority) Regulations on the previous estimate of costs is minimal. *The one item of expenditure arising from the Regulations which was not included in the Regulatory Impact Assessment relating to the 2004 Act was the payment of remuneration and allowances to Board members (other than the Chairman) and to Liaison group members when attending Board, committee or liaison group meetings (as appropriate) and to people invited to attend a Board meeting or a committee meeting.*

10.5 The Regulations require the Authority to pay members of the Board and any committee and any person invited to attend a Board or committee meeting such remuneration and allowances as the Secretary of State may determine. The Authority may determine the

level of remuneration and allowances paid to members of liaison groups, subject to the approval of the Secretary of State. The intention is that remuneration should be limited to reflect payment for loss of earnings to those members who sacrifice a day's income to attend a meeting (i.e. they are not officials of an organisation who attend the meeting as part of their normal duties). They would be entitled to some £55 a day (i.e. the rate paid to people on Jury service). In addition they would be paid travelling expenses and subsistence for meals and overnight accommodation where appropriate. This is standard procedure for Agricultural Wages Board, Agricultural Wages Committee and Agricultural Land Tribunal members. It ensures that people such as farm workers and the self employed are not prevented from serving on the body because they would lose a day's pay or earned income and be out of pocket. Based on payments to representative members of the Agricultural Wages Board over the 4 month period September to December 2004, it is estimated that such payments would total, on average £170 per person per meeting. (This assumes that the majority of claimants will not require overnight accommodation but that a member with a particularly long or difficult journey may need to stay in a hotel overnight.) These payments will increase Authority expenditure slightly and the Authority will need to recoup this through the licence fee.

10.6 The potential cost of loss of earnings, travel and subsistence payments are estimated to be £137,360 over the first five years (Table 6. 2 option 1). On this basis, £15.26 would be added to the cost of a licence if 9,000 licences are issued during this period. If only 2,250 licences are issued, the cost per licence would rise by £61.05.

### *Costs for a typical business*

10.7 The analysis of costs set out above assumes that the cost of the licensing arrangements will be distributed evenly across all businesses applying for a licence. It would be for the Authority to consider whether licence fees are graduated in some way to reflect business size or other such factors. It will be necessary for the Authority to undertake a full public consultation before it makes the Rules which will, amongst other things, fix the rates of fees.

## **11. Identify distributional impacts**

11.1 These Regulations deal solely with the Gangmasters Licensing Authority and therefore do not have a distributional impact. The Authority will be based in Nottingham.

## **12. Business sectors affected**

12.1 The Act applies to the following sectors:

- ◇ Farming and horticulture
- ◇ Shellfish gathering
- ◇ Food processing and packaging
- ◇ Meat processing and packing
- ◇ Fish processing and packing
- ◇ Labour providers

The Act gives the Secretary of State the power to make regulations excluding work of a prescribed description from being work to which the Act applies and regulations specifying circumstances in which a person acting as a gangmaster does not require a licence. A public consultation on the Gangmasters (Exclusion) Regulations will be initiated in early February 2005.

## **13. Any potential unintended consequences**

13.1 A couple of potential unintended consequences which stem from these Regulations have been identified. First, the decision to make a payment in respect of loss of earnings and to pay travel and subsistence expenses will increase the cost of a licence by some £15 to £61, depending on the number of licences issued. The increase is small in relation to the overall cost of a licence which is estimated to be in the region of £1,750 to £2,250..

13.2 The other unintended consequence is that the large Board will find it difficult to take decisions. However, this risk is felt to be outweighed by the benefit of involving all stakeholders and provision in the Regulations for decisions to be taken by majority vote will allow the Board to proceed with its business. As explained in paragraph 6.14, it is intended to review the workings of the Board after three years and any necessary changes will be made after that review.

#### **14. Competition assessment**

14.1 These regulations relate solely to the status and constitution of the Authority, the appointment of its members, the payment of remuneration and allowances to members and other matters relating to the establishment and operation of the Authority. It has been decided that the Authority should have a large Board on which all the key stakeholders are represented. It is considered that the Regulations themselves will have no impact on competition. Furthermore, the Regulatory Impact Assessment of the 2004 Act suggested that the introduction of the licensing arrangements would not result in any significant restriction on competition in the supply of labour in the areas covered by the Act. In fact, it was expected to strengthen competition amongst bona fide labour suppliers by making it difficult for illegal operators to remain in business and introducing a level playing field for legitimate businesses.

#### **15. Consultation with small business**

15.1 It is estimated that at least 85% of labour supply businesses would be defined as small businesses for the purposes of Regulatory Impact Assessments. A small firm or business is one with:

- fewer than 50 employees; and
- no more than 25% of the business owned by another enterprise (which is not a small business); and either
- less than £4.44 million annual turnover; or
- less than £3.18 million annual balance sheet total.

15.2 Defra has been working closely with small businesses to develop best practice guidance in relation to labour providers. Between October 2003 and January 2004 several meetings were held with small business representatives. These helped inform development of the Bill. More recently contact has been primarily through the Association of Labour Providers.

15.3 The consultation document about the Gangmasters (Licensing Authority) Regulations was sent to the Association of Labour Providers and to some two hundred individual labour providers / gangmasters, many of whom would be within the “small businesses” category. A response was received from the Association but none of the individual labour providers commented on the proposals. This is not surprising bearing in mind that the Regulations relate to the Authority, membership of the Board and the way in which it conducts its business. A number of individual gangmasters have been in touch with officials about other aspects of the gangmasters legislation (e.g. what work will be covered by the Gangmasters (Exclusion) Regulations. This reinforces the view that the impact the Gangmasters (Licensing Authority)

Regulations will have on small businesses will be very limited. Because of the very limited impact of these Regulations on businesses, there has been no direct involvement with the Small Business Service.

## **16 Discrimination issues**

16.1 These regulations are not expected to have any discriminatory impact. The Authority will be required to comply with all “anti-discrimination” legislation as it applies to its employees, Board or Liaison Group members and to the conduct of its business. However this is all addressed by general “anti-discrimination” legislation and it would not be appropriate to repeat the provisions in these regulations. When it comes to make its Rules Orders, the Authority will need to assess the impact of its proposals on race equality, disability equality etc.

## **17 Sustainable development**

17. Sustainable development is unlikely to be an issue in relation to these Regulations because they are concerned solely with the establishment of the Authority. However, this is an issue that the Authority will need to take into consideration when formulating its Rules SI.

## **18. Compliance and Guidance**

18.1 These are affirmative resolution procedure regulations which relate solely to the Gangmasters Licensing Authority. Key stakeholder organisations have been working closely with Defra during the preparation of these Regulations and are therefore fairly conversant with them. Informal guidance will be issued to the key stakeholders (i.e. those designated to nominate people to serve on the Board) as soon as the Regulations are laid. Formal guidance will be issued after the regulations have been debated in both Houses of Parliament. This will concentrate on the procedures for nominating and appointing Board members.

18.2 The Authority will enter into a management agreement with Defra. In the course of monitoring the performance of the Authority, Defra will ensure that it is complying with the Regulations and the Office for the Commissioner of Public Appointment guidance on appointments and performance monitoring.

## **19. Implementation**

19.1 These Regulations are subject to affirmative resolution procedures. It is anticipated that Parliamentary scrutiny will start in late January with a view to bringing the Regulations into force by mid March 2005. This will allow the Authority to commence work on 1 April 2005.

19.2 Defra will be working with stakeholders over the intervening period to ensure that the Authority will be in a position to give immediate consideration to the operation of the licensing scheme and the conditions attached to a licence. This will ensure that there is no delay in taking work forward.

## **20. Monitoring and review**

19.1 Ministers have given an undertaking that the composition and working of the Board (i.e. the issues covered by these Regulations) will be reviewed after the Board has been in operation for three years. It is anticipated that the operation of the licensing scheme will be reviewed after five years

## **21. Consultation**

21.1 A full consultation on the draft gangmasters (Licensing Authority) regulations was initiated on 30 July 2004. Sixteen responses were received. The main areas of concern related to the size and composition of the Board and the need for mandatory Liaison Groups. Some advocated a small board whose members were all selected by open competition, the worker interests saw merit in a tripartite approach with each third representing a different sector while other respondents supported the large Board with close stakeholder involvement model. These two issues were reconsidered in the light of the comments received and, as paragraph 6.14 explains, it was decided to retain the large representative Board option but to give the Board the power to establish Liaison groups rather than making them mandatory.

21.2 There was some concern about the proposed tenure of office provisions, for example under the original proposals there was no limit to the number of terms a representative member could serve on the Board. The Regulations have been amended and the normal office of the Commissioner for Public appointments procedures will apply, giving a maximum of ten years under current rules.

21.3 A number of comments related to points of detail. For example it was pointed out that the procedures for the corporate plan and report on activities were unnecessarily onerous. The provisions relating to reports have been simplified and the corporate plan will now be covered in the Management Statement drawn up between Defra and the Authority.

## **22. Summary and recommendation**

22.1 This Regulatory Impact Assessment considers the impact of the Gangmasters (Licensing Authority) Regulations which make provision for the constitution, structure and other matters relating to the operation of the Gangmasters Licensing Authority. The Regulatory Impact Assessment underpinning the Gangmasters (Licensing) Act estimated the cost of establishing and operating the Authority. This Assessment considers only those costs which were not taken into account at that time. These are the cost of making loss of earnings, travel and subsistence payments to Board members for attending Board and committee meetings, to people invited to attend a Board or committee meeting and to members of the liaison groups. Such costs depend on the size and composition of the Board, its committees and liaison groups and the number of times they meet. It is considered that the overriding requirement is a large representative Board (Option 1), along the lines proposed in the consultation document. It is estimated that the cost of making payments to members of the Board would add some £137,360 to the cost of the Authority over the first five years.

### ***Cost/benefit to the Exchequer of adopting this option***

22.2 There is not expected to be any cost or benefit to the Exchequer.

### ***Cost / benefit to labour providers***

22.3 Depending on the number of licences issued over the first five years, the cost to gangmasters is likely to be between £15 and £61 per licence. This represents a very small increase on the cost of a licence which is estimated to be in the region of £1,750 to £2,250.

### ***Recommendation***

22.4 A large representative Board is essential during the period when the licensing arrangements are developed. Option 1 is the only one which meets this requirement.

## **23. Ministerial declaration**

23.1 I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs.

Signed: *Lord Whitty*

Date: *25<sup>th</sup> January 2005*

### **Lord Whitty**

Parliamentary Under Secretary of State

Department for Environment, Food and Rural Affairs

Contact Point: Geoff Webdale ([geoff.r.webdale@defra.gsi.gov.uk](mailto:geoff.r.webdale@defra.gsi.gov.uk)), tel. 020-7238 5755

## **An outline of the revised proposed Gangmasters (Licensing Authority) Regulations**

### **Structure of the Authority**

1. The Authority will be a body corporate. A Board will direct the affairs of the Authority and ensure that it discharges its functions. The Board will have the power to establish stakeholder liaison groups but will not be required to do so. Under the original proposal, the Board would have been required to establish three liaison groups.

### **Membership**

2. The **Board** will have a chairman, up to 19 representative members and nine ex-officio members. This gives total membership of 29 (including the chairman) as opposed to 23 under the original proposals. A deputy chairman will be appointed by the Board from amongst the representative members rather than having a deputy chairman appointed as an additional member by the Secretary of State

### **Board Appointments**

3. The chairman will be appointed by the Secretary of State using normal Non-Departmental Public Body appointment procedures in accordance with procedures laid down by the Office of the Commissioner for Public Appointments. Representative members will be nominated by organizations designated in the Regulations (see Schedule 1). There are fallback provisions which will allow the Secretary of State to make an appointment if an organization fails to make a nomination. Ex officio members will be postholders in Departments specified in the regulations (see Schedule 2). Standard Office of the Commissioner for Public Appointments procedures will apply to length of term and re-appointments. It is anticipated that neither the chairman nor any representative member would be allowed to serve more than three three-year terms. Ex officio members would remain on the Board while serving in a specific post.

### **Staff of the Authority**

4. The first chief executive will be appointed by the Secretary of State. Each subsequent chief executive will be appointed by the Board after consulting the Secretary of State. The Authority will be given the power to employ staff.

### **Remuneration of staff, agents or consultants and payments to Board and liaison Group members**

5. The proposed regulations will give the Authority the power to pay its staff, agents or consultants such remuneration, allowances and pensions (the last applying to employees and former employees only) it may, with the consent of the Secretary of State, determine.

### **Proceedings of the Board; establishment of committees**

6. The proposed Regulations give the Board the power to establish committees to which it may delegate matters for discussion and decision. The original proposals provided for advisory committees only.

7. The regulations also give the Board power to regulate its procedure and the procedure of its committees, subject to a decisions at Board meetings being taken by a simple majority



vote of those voting members present at the time and a quorum provision which will apply unless the Board agrees to change it.

### **Annual report and Accounts**

8. The Authority will be required to follow standard procedure to produce an annual report and accounts. It will also be empowered to publish “occasional” reports.

### **Corporate plan**

9. The provision dealing with the production of a corporate plan has been deleted. This will be covered in the Management Agreement.

### **The Authority as a Non-Departmental Public Body**

10. The Gangmasters Licensing Authority is to be a Non-Departmental Public Body and will be subject to the constraints which apply to such bodies. Defra will draw up a clear strategic-control framework within which the body is required to operate, including conditions under which any government funds are provided. This will be in the form of a management statement / financial memorandum or memorandum of understanding and it will give the Authority the maximum operational flexibility consistent with full accountability to Parliament.