

**EXPLANATORY MEMORANDUM TO THE  
GANGMASTERS (APPEALS) REGULATIONS 2006**

**2006 No. 662**

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 make provision for an appeal against a decision by the Gangmasters Licensing Authority. Appeals will be determined by an “appointed person”, appointed from members of the panel of Employment Tribunal Chairmen, who can, if appropriate, reach a decision without an oral hearing, provided the parties agree. The regulations set out the procedure to be followed and make provision for an expedited procedure to apply where a decision by the Authority to revoke or suspend a licence is a decision with immediate effect.

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

3.1 None

**4. Legislative Background**

4.1 The Gangmasters (Appeals) Regulations are made under the Gangmasters (Licensing) Act 2004 (“the 2004 Act”). 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. The Authority was set up by the Gangmasters (Licensing Authority) Regulations 2005 on 1 April 2005.

4.2 The 2004 Act gives the Authority the power to:

- grant license;
- modify or revoke a licence;
- consent to the transfer of a licence;
- make the grant of a licence subject to conditions.

4.3 The 2004 Act requires the Secretary of State to make regulations making provision for an appeal against a decision by the Authority. Appeals are to be

determined by an appointed person and the regulations include provision for the payment of remuneration and allowances to him or her.

4.4 This is one of three Statutory Instruments to be made under the 2004 Act, coming into force on the same day. The others are:

- The Gangmasters Licensing (Exclusions) Regulations 2006 (specifying circumstances in which a licence is not required)
- The Gangmasters (Licensing Conditions) Rules 2006 (made by the Authority and setting out procedures applicants must follow and the conditions that they must comply with).

Regulations making provisions as to what constitutes “reasonable steps” which a person should take to satisfy himself that a gangmaster is acting under the authority of a valid licence will be made in due course.

## **5. Extent**

5.1 This instrument applies to Great Britain

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

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **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 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. The Authority’s licence standards will require licence holders to act in a “fit and proper” manner. To meet this test the licence holder must have no relevant previous convictions or outstanding charges against them. They will also be expected to operate their business legally and to ensure that the people they employ or supply are treated fairly. In particular they will be expected to ensure the proper payment of wages, national insurance, tax and VAT. Debt bondage, harsh treatment and victimisation of workers will be precluded. They will also be required to take steps to ensure safe working conditions. 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 Authority is now ready to invite applications for licences and therefore the appeal arrangements need to come into operation.

7.4 The Gangmasters (Licensing ) Act attracted a considerable amount of publicity but there has been little public interest in the Gangmasters (Appeals) Regulations. Stakeholders' comments dealt primarily with points of detail.

7.5 Paragraphs 32.1 – 32.4 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 responses is on the internet at <http://defraweb/corporate/consult/gangmaster-appealsregs/summary-responses.pdf>.

## **8. Impact**

8.1 A Regulatory Impact Assessment is attached to this memorandum

## **9. Contact**

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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 (APPEALS) REGULATIONS 2006 FINAL REGULATORY IMPACT ASSESSMENT

## 1. Executive Summary

1.1 This Final Regulatory Impact Assessment assesses the impact of the Gangmasters (Appeals) Regulations 2006. These Regulations are being made under sections 10 and 25(2) of the Gangmasters (Licensing) Act 2004. This 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 some of these gangmasters. A separate Regulatory Impact Assessment which deals with the main components of the Act has already been published.

1.2 The Act establishes the Gangmasters Licensing Authority and gives it responsibility for the introduction and operation of the new licensing arrangements. The Authority formally came into being on 1 April 2005 and one of its first tasks was to put in hand arrangements for the licensing of labour providers and to determine the licence conditions which will apply. Before the Authority starts issuing licences, an appeals mechanism needs to be in place.

1.3 The Act requires that appeals be determined by an Appointed Person and specifies those decisions of the Authority which are appealable. The Partial Regulatory Impact Assessment considered three options but option 1, to do nothing, was dismissed. This Final Regulatory Impact Assessment considers the two remaining options:

- an Appointed Person appeals procedure under which it is possible for an appeal to be determined without a hearing (option 2) ;
- an Appointed Persons appeal procedure which requires the Appointed Person to have a oral hearing in every case (Option 3).

None of the respondents to the public consultation considered that a mandatory oral hearing was necessary and the Regulations are, therefore based on option 2.

1.4 The Regulations provide for Appointed Persons to be appointed from members of the panel of Employment Tribunal Chairmen. They set out the procedure to be followed and allow the appellant and the Authority to opt out of their entitlement to an oral hearing provided the Appointed Person considers this appropriate. It is anticipated that this should allow appeals to be determined quickly and inexpensively. Normally when a labour provider appeals, the Authority's decision will be put on hold until the appeal has been determined. However, where the Authority revokes a licence with immediate effect, the decision will take effect but the regulations provide for the appeal to be determined by an expedited procedure.

1.5 It is estimated that under option 2, a labour provider would incur costs in the region of £310 for an appeal with no oral hearing if no legal advice was taken. This would rise to some £1,110 with legal input. It is estimated that a

labour provider would incur costs of some £3,390 for an appeal with an oral hearing. The total cost to the sector would be in the region of £450,000 spread over four years. The estimated cost to the Government of providing the appeals service and the estimated cost to the Authority are both within the estimate made in the Regulatory Impact Assessment on the 2004 Act. Therefore these are not considered further.

## 2. Title of Regulatory Proposal

2.1 The Gangmasters (Appeals) Regulations 2006 made under sections 10 and 25(2) of the Gangmasters (Licensing) Act 2004.

## 3. Purpose and intended effect of measure

### *Introduction*

3.1 The Gangmasters (Licensing) Act 2004 (“the Act”) received Royal Assent on 8 July 2004. The primary objective of the Act is to licence gangmasters (hereafter described as labour providers, except where the term is used in reference to provisions of the Act) operating in agriculture, shellfish gathering and associated processing and packaging activities in order to curb the exploitative activities currently undertaken by some.

3.2 The Act establishes the **Gangmasters Licensing Authority (“the Authority”)** to set up and operate the licensing arrangements. The Authority was established on 1 April 2005 when the Gangmasters (Licensing Authority) Regulations 2005, made by the Secretary of State under sections 1(5) and 25(2) of the Act, came into force. Those Regulations make provision as to the status and constitution of the Authority, the appointment of its members, the payment of remuneration and allowances and other matters connected with the Authority’s establishment and operation. The Gangmasters (Licensing) Act 2004 and the [Gangmasters \(Licensing Authority\) Regulations 2005](#) are the subject of separate [Regulatory Impact Assessments](#).

3.3 The Authority will be responsible for granting or refusing an application for a licence, for determining the conditions to which the licence is subject and for deciding whether or not licences may be transferred, or whether they should be modified or revoked. The Authority will also be required to maintain a register of persons who are licensed under the Act and it will be an offence for a person to enter into an arrangement for the supply of workers with a labour provider who is not on the register. This will make it very difficult for an unlicensed labour provider to operate in the areas covered by the 2004 Act.

3.4 Under section 10 of the 2004 Act, the Secretary of State is required to make provision for appeals against any decision of the Authority –

- a) to refuse an application for a licence,
- b) as to the conditions to which the grant of a licence is subject;
- c) to refuse consent to the transfer of a licence, or
- d) to modify or revoke a licence.

3.5 The regulations must make provision –

- a) for the appointment of a person to hear and determine such appeals (including the payment of remuneration and allowances) and

b) for the procedure to be followed in connection with an appeal. It should be noted that appeals are to be determined by a single person, acting as an adjudicator, as opposed to e.g. a tribunal comprising three people.

3.6 Separate regulations will be made in respect of appeals in Northern Ireland (Section 28 and paragraph 11 of Schedule 2 to the 2004 Act refer). However it is understood that similar arrangements will apply.

**3.7 This Regulatory Impact Assessment relates only to the Gangmasters (Appeals) Regulations 2006 made under section 10 of the Act which will apply in England, Wales and Scotland. It does not consider the impact of other aspects of the labour provider licensing arrangements.**

## **4. The Gangmasters (Appeals) Regulations 2006**

### ***Background***

4.1 The Gangmasters (Licensing) Act 2004 requires appeals against a licensing decision by the Gangmasters Licensing Authority to be heard and determined by a single “Appointed Person” and sets out which decisions by the Authority are subject to appeal. The Gangmasters (Appeals) Regulations define the field from which the Appointed Person will be selected and set out in detail how an appeal should be brought, progressed and determined. Any appeal system must operate fairly and the rules follow standard procedures set down by the Council of Tribunals where appropriate.

### ***Objectives***

4.2 The objective of the Gangmasters (Appeals) Regulations is to set up an appeals system which:

- is open and independent
- is user friendly,
- is designed to be fair and impartial, and
- will determine appeals quickly and cost effectively.

## **5. Risk assessment**

5.1 If the persons appointed to determine appeals do not establish a reputation for giving fair, impartial judgements, the Secretary of State will be subject to adverse criticism.

5.2 If a high percentage of appeals are upheld by the Appointed Persons, the Authority will be seen to be acting in an over-zealous manner. In these circumstances, unless corrective action is taken quickly, the Authority would lose credibility.

5.3 There is a risk that an appeals process will be considered to be time-consuming, bureaucratic and costly and that it does not achieve the desired outcomes.

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

6.1 It is essential that there should be a relatively quick and fair procedure which a potential Appellant can follow. It is also essential that the appeals process should be easily accessible to all potential Appellants.

## **7. Options**

### ***Option 1: Do nothing***

7.1 The first option would be to do nothing, i.e. no appeal procedure would be provided.

### ***Option 2: An Appointed Person appeals procedure under which the parties can opt out of an oral hearing and, provided the Appointed Person considers it appropriate, the appeal can be determined without a hearing***

7.2 The rules would set out the procedure to be followed and set time limits or provide for these to be set by the Appointed Person or the secretariat where this is more appropriate. The Appointed Person would have the power to extend prescribed time limits. At each stage, the aim would be to provide a party with adequate time to respond while ensuring that momentum was maintained. While the rules would provide for a hearing, they would allow the Appointed Person to determine an appeal without an oral hearing if the parties agreed and the Appointed Person considered it appropriate. This should ensure that decisions are fair and based on balanced, objective evidence which at the same time being relatively speedy and cost effective. The outline procedure using the Option 2 model are set out at Appendix 1.

### ***Option 3: An Appointed Persons appeal procedure which requires the Appointed Person to have a hearing.***

7.3 This option is similar to option 2 but the Appointed Person would be required to hold an oral hearing in every case, at which the parties could appear and be represented, before determining an appeal. The procedure would be similar to that outlined at Appendix 1, omitting those steps which relate to a decision without an oral hearing.

## **8. Consideration of options 1, 2 and 3**

8.1 Option 1, doing nothing would contravene section 10 of the Act which requires the Secretary of State to make provision for an appeal against any decision by the Authority. It is possible that it would also contravene Article 6 of the European Convention on Human Rights which deals with the right to a

fair trial. It is, therefore, considered to be legally unacceptable and for this reason it is not considered further.

8.2 The following sections consider the benefits and disadvantages of options 2 and 3 and the costs of these two options.

## **9. Advantages and disadvantages of option 2**

9.1 It is estimated that using the discretionary oral hearing route in option 2 it would be possible for an appeal to be determined within five weeks of an appeal being received by the secretariat. However, in most instances an appeal not going to an oral hearing would be more likely to take some 4 months to be determined. A case going to an oral hearing would normally take 5 to 6 months although determination in two months would be possible.

9.2 The procedure, especially where there was no oral hearing, would be relatively straightforward and this should enable an appellant in most cases to take forward his case without employing a lawyer. In practice, however, it is likely that labour providers may wish to take legal advice. Likewise it is anticipated that the Authority would not need to be legally represented in these cases though again, it might consider it prudent to be so. Where a case went to an oral hearing it is likely that both parties would need to employ a lawyer, depending on the complexity of the issues, but this would not be a requirement under this option.

9.3 Under option 2 the Appointed Person would be given authority to hold an oral hearing if he or she considered that there were reasonable grounds to do so. This would ensure that no case was determined without an oral hearing where this was inappropriate. Option 2 provides a procedure which is fair to both parties and is seen to be fair.

9.4 A possible disadvantage associated with option 2 is that it may be considered to be bureaucratic but it is difficult to devise a fair appeals procedure which is not. In any case the parties would have the opportunity to use the relatively short simple no oral hearing procedure if they wished to and it was appropriate.

## **10. Advantages and disadvantages of option 3**

10.1 Option 3 shares with option 2 the benefit of being fair to both parties and of being seen to be fair. It is, however, much less flexible than option 2 because all appeals would have to be determined by an oral hearing.

10.2 It is anticipated that a case going to an oral hearing would normally take 5 to 6 months to determine although determination in two months would be possible. Parties would not have the option of omitting the oral hearing even if they and the Appointed Person considered it unnecessary. In this respect option 3 is overly bureaucratic. The appellant and the Authority would be more likely to consider it necessary to employ a lawyer where there was an

oral hearing and this would increase their costs. Costs to the secretariat would also increase if all appeals had to be determined by oral hearing.

## **Costs**

11.1 This section estimates:

- the number of appeals which may be made in the first four years of the licensing regime;
- the costs for the Authority;
- the cost for the Government;
- the cost for the labour provider

and compares the estimated costs under options 2 and 3.

### ***Estimated number of appeals***

11.2 When the Authority rejects an application from a labour provider, imposes conditions which the labour provider considers unreasonable, modifies or revokes a licence or refuses consent to the transfer of a licence, a gangmaster will have to decide whether to appeal. As explained in paragraph 3.3 above it will be very difficult for a labour provider to operate without a licence in the areas covered by the legislation. It is considered likely that those labour providers who fail to obtain a licence because they are not compliant will either attempt to rectify their failings and re-apply or concentrate on supplying labour in non-regulated areas. They have little to gain by appealing. Labour providers who are dissatisfied with the conditions which the Authority has imposed, whose application for the transfer of a licence has been rejected or whose licence has been revoked or modified, may appeal.

11.3 The Regulatory Impact Assessment accompanying the Gangmasters (Licensing) Act 2004 estimated that there would be 9,000 licence applications (4,000 initial applications, subsequent applications from new labour providers and the first round of renewals) in the four years from January 2006. On this basis, and assuming that:

- a) 10% of applications are rejected or the conditions are considered unacceptable by the labour provider and
- b) half of those affected appeal

an estimate was made of the possible number of appeals. The current Defra estimate, based on research which it commissioned, is that there are some 1,000 labour providers. This is generally accepted as the best figure to use. Furthermore, the original Defra assumption was based on labour providers being required to apply for a new licence every three years. The Authority is proposing that an annual licence fee must be paid (otherwise the licence will

be revoked) and the labour provider must confirm that nothing has changed in relation to the information held by the Authority. There will not be a compliance check. Compliance activity can occur at any time and will depend on the likelihood that the individual labour provider is not complying with the legislation.

11.4 Appendix 2 estimates the number of appeals using:

- the original assumptions made in the Partial Regulatory Impact Assessment,
- assumptions derived from current Defra data and
- assumptions derived from current data and further suggestions put forward by the Association of Labour Providers.

The second and third estimates also take account of the Authority's proposed procedures. On the basis of these assumptions, there may be anything from one or two appeals a year to an average of 175 a year (although the latter, based on Defra's original estimate is almost certainly too high). The estimate (Appendix 2 Table 2) based on the current Defra advice and the procedure that the Authority is planning to adopt, suggests some 200 appeals spread over four year giving an average of some 50 appeals a year. This is the figure which will be used as a basis on which to calculate the costs, in this Final Regulatory Impact Assessment.

11.5 It must be emphasised that the estimated number of licence applications and appeals against the Authority's decisions are subject to a very wide margin of error. Factors which might have an impact on the number of appeals are:

- how worthwhile it is from a business point of view for labour providers to obtain a licence that will enable them to operate legally in the area covered by the legislation;
- whether applications which are rejected by the Authority - come primarily from labour providers who know that they are operating illegally and will be reluctant to appeal and draw further attention to their activities;

11.6 Where a labour provider decides to appeal against a decision of the Authority, the labour provider will have to bear the cost of preparing his / her case and any legal representation involved. The Authority will have the cost of responding to the appeal and the Government will meet the Appointed Person's fee for determining the appeal and provision of an Appeals Secretariat. There will be no fee or other charge for the use of the appeals service.

### ***Costs for the Authority***

11.7 When an estimate of the costs of the Gangmasters Licensing Authority was made for the RIA which accompanied the Gangmasters (Licensing) Act 2004, provision for appeals was included. It was estimated that Authority staff costs would be in the region of £670,000 over the four year period and that

legal advice would cost a further £185,000. This suggested a total expenditure by the Authority of £855,000. This sum was included in the estimated running costs for the Authority which would be met through the licence fee.

11.8 Now it is possible to make a rather more informed estimate of the costs. The details are set out in Appendix 3. This concludes that the total cost over the four year period under **option 2** would be **£478,800**. The total cost under **option 3** would be **£737,600**. In both instances the estimate is below the original estimate.

### ***Costs for the Government***

11.9 The Government will bear the cost of providing the Appeals Secretariat and paying the fee of the Appointed Person. In the Final RIA accompanying the Gangmasters (Licensing Authority) Act 2004, we estimated that the cost would be £1,278,000 over four years. This comprised staff costs and expenses of £540,000 and £738,000 in respect of fees paid to the Appointed Persons and charges for hearing venues and associated expenses.

11.10 Now that we have a clearer idea of the work involved, these costs have been recalculated. The details are set out in Appendix 4. This concludes that the total cost over the four year period under **option 2** would be **£ 266,600 (£132,600 in respect of the secretariat and £134,000 in respect of Appointed Persons)**. The total cost under **option 3** would be **£451,400 (Secretariat £223,400; Appointed Persons £228,000)**. Under both options the secretariat support and the expenditure on Appointed Persons would be considerably less than under the original estimate.

### ***Costs for a typical labour provider business***

11.11 A labour provider will only need to make use of the appeals procedure if he is dissatisfied with a decision by the Authority. It is anticipated that the **majority of those labour providers who comply with the law will not have a reason to appeal and will therefore incur no costs.**

11.12 The Partial Regulatory Impact Assessment included estimates of the cost of an appeal, with and without an oral hearing, to a labour provider. The figures have been revised to take account of comments from the Association of Labour Providers and the revised details are set out in Appendix 5. This concludes that if an appeal did not go to an oral hearing and the labour provider did not take legal advice, an appeal could cost as little as **£310**. This would rise to **£1,110** where legal advice was taken. Where an appeal was determined after an oral hearing it would cost the labour provider approximately **£3,390**.

### ***Costs for the labour provider industry***

11.13 Assuming that there are 200 appeals over the initial four years the cost to the labour provider industry can be estimated. Under **option 2** if half the

appeals are determined without an oral hearing, the total cost to the industry is **£450,000**. Under **option 3** the total cost to the industry is **£678,000**.

### **Comparison of costs under options 2 and 3**

11.14 Table 11.1 compares the costs under options 2 and 3. It shows that option 3 which requires the parties to have an oral hearing is considerably more expensive overall as option 2.

**Table 11.6. Comparison of costs under options 2 and 3**

	<b>Option 2 (£)</b>	<b>Option 3 (£)</b>
Cost to the Authority	478,800	737,600
Cost to Government (secretariat)	132,600	223,400
Cost to Government (Appointed Person)	134,000	228,000
Cost to Labour providers	450,000	678,000
<b>Total cost</b>	<b>1,195,400</b>	<b>1,867,000</b>

11.15 The Regulatory Impact Assessment on the Gangmasters (Licensing Authority) Act 2004 estimated the cost of appeals to both the Authority and the Government. If the estimated cost under option 2 or option 3 is higher than the original estimate, this represents a new cost and the implications need to be considered.

11.16 Under both option 2 and option 3 the estimated cost to the Authority and to the Government are significantly less than in the original estimate in the Final RIA accompanying the Gangmasters (Licensing Authority) Act 2004. This is because the estimated number of appeals has been reduced from 700 over four years to 200 over four years. On this basis no new costs are involved.

## **12. Business sectors affected**

12.1 The following sectors will be directly affected:

- Gangmasters (labour providers or other persons) supplying labour to the sectors covered by the Act
- Users of labour to gather shellfish

The following sectors may be indirectly affected:

- Farming and horticulture
- Shellfish gathering
- Meat processing and packing
- Fish (including shellfish) processing and packing
- Other food processing and packing

## 13 Consultation with small business

13.1 It is estimated that at least 85% of labour provider 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.

13.2 An early draft of the Partial Regulatory Impact Assessment was sent to Association of Labour Providers for consideration by them and their members with special regard to the impact on small businesses. The Association was content with the outlined procedure (based on option 2) and advised against further consultation with small businesses in this sector. The consultation document (including the Partial Regulatory Impact Assessment) was sent direct to some 400 individual stakeholders many of which were small businesses and comments were invited. No Labour Provider businesses responded.

## 14 The economic impacts

14.1 Labour providers who comply with the licence criteria set by the Authority should not need to use the Appeals Regulations. In practice it is anticipated that only a relatively small number will wish to make use of the procedure. Where an appeal is successful and, as a result, a labour provider whose application was initially rejected is granted a licence, he or she may need to increase the costs to labour users to recoup the expense of the appeal. However, beyond the level of the individual business, the costs of either option are likely to be minimal. There should be no impact on the quality or availability of goods or services.

14.2 Neither option will give rise to new technologies or result in changes in the investment behaviour into the UK and UK firms overseas and into particular industries.

## 15. Competition assessment

15.1 There is currently unfair competition between labour providers who operate illegally (e.g. don't pay national minimum wage/agricultural minimum wage, VAT, income tax, NI contributions and/or respect health and safety legislation) and labour providers who are working within the law. The very nature of the informal economy means that accurate information on the number of gang workers supplied to farmers and growers by labour providers and the extent of illegal working is not available. However, there is a cross-industry consensus that gangmasters who operate illegally are undercutting those complying with the law. The effective enforcement of existing legislation

which the licensing regime should facilitate will be of benefit to labour providers operating within the law. It is anticipated that those labour providers who are operating in accordance with the law will be granted a licence and they will not need to use the appeals procedure. The Authority is responsible for determining the procedures that an applicant must follow and the criteria which must be met in order for a licence to be granted. It included a competition assessment in the Partial Regulatory Impact Assessment which formed part of the Gangmaster Licensing Consultation Document, issued on 17 October 2005.

15.2 For the purposes of this Impact Assessment it is necessary to consider whether the proposed appeals procedure will have any impact on competition. Good data are lacking but it is highly improbable that any single labour provider business has more than 10% of the market share. The appeal arrangements will not affect the market structure by changing the number or size of firms (though it is possible that the introduction of the licensing arrangements will do this). The Appeals Regulations will not lead to higher set-up or on-going costs for new businesses when compared to existing firms and they will not restrict the ability of labour providers to choose the price, quality, range of their services or their location. The costs of an appeal will affect some firms and not others. Those who are granted a licence (or allowed to transfer it), are content with the conditions attached to the licence and who do not have their licence modified or revoked will have no need to appeal. In the light of this analysis, it is concluded that the proposals will have little or no effect on competition. Indeed, the appeals mechanism presents an opportunity for redress to those who consider their licence application has been incorrectly treated by the Authority – which further helps to provide a level playing field.

## **16. Unintended consequences**

16.1 No significant unintended consequences of any of the proposed options have been identified to date.

## **17. Social impacts**

17.1. The social impacts of the proposals have been assessed. Neither option will have any impact on **health-related behaviour, health and safety, the crime rate, the levels of skills and education** in the industry, the provision of **facilities or services that support community cohesion or in other ways affect the quality of life in the local community**.

## **18. Equality and fairness: under-represented groups**

18.1 As the legislation affects the public directly, it is necessary to test whether any of the options will have any impact on under-represented groups e.g. labour providers under-represented in the sectors covered by the Gangmasters Licensing Authority on grounds of race, faith, gender or disability. This list is not exhaustive but an indication of the areas to be

considered. Age-discrimination is considered separately in the section on children, young and older people, below. An analysis is at Appendix 6.

18.2 The analysis concludes that the Appeals procedure will have minimal impact on under-represented groups. The Appointed Person will need to take account of anti-discrimination legislation and human rights principles when considering an appeal. Where possible, guidance will be made available in the language of the appellant. The secretariat will provide translations of forms and instructions where necessary. An interpreter will have to be present at an oral hearing if the appellant needs one in order to receive a fair trial. If one of the parties suffers from any disability, appropriate adjustments must be made e.g. the venue for the oral hearing must be accessible to a person with limited mobility. This is all addressed by general anti-discrimination legislation and it is unnecessary to repeat the provisions in these regulations. The secretariat will be employees of a Government Department or another organisation and their employer will be subject to the general duties arising under anti-discrimination legislation.

## **19. Children, young people and older people**

19.1 The appeal arrangements are available to any labour provider who is entitled to challenge a decision by the Authority, irrespective of the appellant's age.

## **20. Income groups**

20.1 Labour providers include some small-scale operators providing services to local employers. Some of these business may make a comparatively modest profit. It is important that these small labour providers should be able to use the appeal arrangements if they are dissatisfied with a decision by the Authority. Option 2 provides for an appeal to be determined without an oral hearing where the parties are content and the Appointed Person considers it appropriate. This should help to keep the costs to a minimum while ensuring that the procedure is fair and impartial.

## **21. Human Rights**

21.1 The compatibility of the Regulations with the European Convention on Human Rights should be considered in relation to Article 6 (Right to a fair trial). Both options are compatible with Article 6, providing a fair means for appeals to be determined.

## **22. Particular regions of the UK**

22.1 Use of gang labour in agricultural activities is concentrated in East Anglia, Suffolk, Lincolnshire, the South Coast, Hereford and Worcestershire. Smaller pockets of activity exist in Scotland. Shellfish gathering takes place around the coast and estuaries of England, Wales and Scotland. Fish processing activities tend to be concentrated in Scotland. However, labour

provider activities are not confined to these areas. Workers are often recruited in the large urban conurbations and bussed daily to their place of work

## **23. Wales and Scotland**

23.1 These regulations will apply in England, Wales and Scotland.

## **24. The impact on rural communities (i.e. Rural Proofing)**

24.1. Appendix 7 considers the rural proofing checklist. This confirms that the impact of either option on rural communities would be minimal.

## **25. Environmental impact**

25.1 Appendix 8 considers whether the Appeals Regulations will have an environmental impact. It concludes which ever option is adopted, they will not.

## **26. Sustainable development**

26.1 Appendix 9 considers sustainable development. It concludes that, as the Appeals Regulations aim to provide a just way of settling certain disputes between the Authority and individual labour providers, they may make a very small contribution to sustainable development. This applies to either option.

## **27. Hampton and “Less is More” (*including enforcement and sanctions*)**

27.1 The Gangmasters (Appeals) Regulations will be a new piece of legislation which does not replace any other legislation on the statute book. However, the Secretary of State is required to make Regulations setting out an appeal procedure and those labour providers whose applications are rejected or who are dissatisfied with the conditions attached to a licence or other decision by the Authority have a right to appeal. Efforts have been made to keep the arrangements as simple as possible and a short Guidance booklet will be available. The Appeals Secretariat will guide an Appellant through the system.

27.2 As the Regulations are concerned solely with appeals, enforcement issues and sanctions do not apply.

## **28. Compliance**

28.1 Under either option, the Regulations will set out the procedure to be followed by a labour provider who wishes to appeal against a decision by the Authority. The Appointed Person is given discretion to extend the time for completing certain stages (e.g. making an appeal) where he or she feels there are reasonable grounds and it would be in the interests of justice to do so. However, unless an extension is granted, a labour provider who fails to comply with the rules in these Regulations loses the chance to appeal. If the labour provider or the Gangmasters Licensing Authority is not content with the

outcome of an appeal he or she can apply for judicial review. It is not necessary to provide for judicial review proceedings in the legislation as it is part of the High Court's general inherent common law supervisory jurisdiction over all public law bodies.

## **29. How appeals arrangements will be publicised**

29.1 A short booklet is being produced which will give guidance to labour providers on how to appeal against a decision by the Authority. An electronic copy will be made available on the Defra Gangmasters website as soon as it is available.

29.2 It is anticipated that when the Authority notifies a labour provider of its decision regarding his / her application or of its decision to modify or revoke the labour provider's licence, reference will be made to the appeals procedure, the address of the secretariat will be given and an explanatory leaflet will be provided.

29.3 Once a labour provider has submitted his /her appeal, the Appeals Secretariat will provide step by step guidance.

## **30. Implementation and Delivery plan**

30.1 These Regulations are subject to negative resolution procedures. The Regulations, accompanied by an Explanatory Memorandum and the final signed Regulatory Impact Assessment will be laid before Parliament in March 2006. They will come into force on 6 April 2006 at the same time as the Authority's Licensing Conditions Rules. The Authority cannot invite Labour Providers to apply for licences until the Rules are in force. By bringing the Appeals Regulations into force on the same day we will ensure that the appeals procedure is in operation before any applications are rejected.

30.2 Defra officials have been liaising with the Employment Tribunals Service about any introductory information that the Appointed Persons will require. A letter will be sent to potential Appointed Persons at the beginning of April, explaining that they may be invited to serve in this capacity. A pack giving background information and the relevant legislation will be sent to each Appointed Person on appointment.

## **31. Post implementation monitoring and review**

31.1 The operation of the Gangmasters Licensing Authority will be reviewed every 5 years. The appeal arrangements will be reviewed at the same time. The review will take the form of an independent external audit.

31.2 We will discuss the operation of the appeals process at least annually with representatives of labour providers, the Chairman of the Gangmasters Licensing Authority and the Appeals Secretariat and will fine-tune operating aspects where appropriate.

### **32. Results of consultation (responses received from different sectors; changes to RIA as a result of comments)**

32.1 A full consultation on the draft Gangmasters (Appeals) Regulations was initiated on 30 March 2005. Eight responses were received. The consensus was that the proposals, based on Option 2 in the Partial Regulatory Impact Assessment, were generally satisfactory.

32.2 The Consultation Document had asked for comments on the field from which the Appointed Persons should be drawn and suggested members of the panel of Employment Tribunal Chairmen or Chairmen and Deputy Chairmen of the Agricultural Land Tribunals. Views were divided though there was recognition that members of either Tribunal would be suited to the work. However, the Agricultural Land Tribunals cover England and Wales only whereas Employment Tribunals operate throughout the UK. It has therefore been decided that Employment Tribunal Chairmen should act as Appointed Persons as this will ensure uniformity.

32.3 The Consultation Document asked for comments on the principle of allowing appeals to be determined without a hearing (i.e. option 2 in the Partial RIA) as opposed to making an oral hearing mandatory (i.e. option 3 in the Partial RIA). There was no support for mandatory oral hearings but it was pointed out that both parties had an inalienable right to an oral hearing and that they should be required to opt out of an oral hearing rather than having to opt in (i.e. to request one) as was proposed. Option 2 has been revised to take account of this comment. The Regulations give both parties the opportunity to agree that the appeal can be decided without an oral hearing. Provided the Appointed Person considers this is appropriate, the appeal will be determined without an oral hearing.

32.4 A number of the comments related to detailed points of procedure, for example addressing the situation where the Authority failed to submit a reply to an appeal and the tightening up the proposed rules for amending an appeal. Most of these suggestions have been incorporated into the revised draft Regulations.

### **33. Conclusions and recommendation**

33.1. This Regulatory Impact Assessment recognises that it is necessary to make Regulations making provision for an appeal against a decision by the Authority. The two options under consideration are very similar but whereas option 3 would require all appeals to be determined by an Appointed Person after an oral hearing, option 2 allows the parties to opt out of this entitlement and, provided the Appointed Person does not consider there are reasonable grounds for an oral hearing, he or she can determine the appeal on the basis of the written evidence. **None of the respondents to the public consultation considered that a mandatory oral hearing was necessary and it is therefore recommended that Option 2 should be adopted.**

33.2 Option 2 is flexible. It gives the parties the opportunity to resolve an appeal relatively speedily (especially if there is no hearing) and relatively inexpensively (particularly if legal advice is dispensed with) while ensuring that the procedure is fair and impartial and is seen to be fair and impartial. The procedure is straightforward and the Appeals Secretariat will be trained to guide labour providers from stage to stage so that they will find the arrangements user friendly.

33.3 Section 11 and Appendices 2 – 5 consider the costs of Options 2 and 3. The cost to the Authority, the Government and the labour provider of an individual case going to an oral hearing would be the same under either option. However, because option 2 allows for cases to be determined without an oral hearing there is the potential for individual cases to cost all parties significantly less. On the assumption that half of all cases will follow the no-hearing route this would represent a significant saving to the Authority, to Government and to the labour providing sector overall.

33.4 The Gangmasters (Appeals) Regulations, based on option 2 meet the objectives for the regulations, set out in paragraph 4.2 above.

33.5 It is necessary to consider the cost / benefit of the Regulations to the Authority, Government and labour providers. The costs to all three interests have been considered in some detail above. The benefit to the labour provider who is dissatisfied with the Authority's decision is that he or she will be able to appeal and that appeal will be determined by an independent Appointed Person. The Authority will also stand to benefit from an impartial appeal arrangement which should ensure that both it and the appellant receive a fair hearing. The Government in providing, financing and supporting the appeal arrangements will be fulfilling an obligation placed on it by the 2004 Act

## **35. Ministerial declaration**

35.1 I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs. The procedure will be open, independent and user friendly. It will enable appeals to be determined fairly and impartially.

Signed Bach  
Date 8<sup>th</sup> March 2006

Minister's Name Lord Willy Bach  
Title Minister for Sustainable Farming and Food  
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

## **APPENDIX 1**

### **Procedure**

The proposed appeal procedure is as follows :

- a) A labour provider is notified by the Authority of its decision e.g. to reject a licence application.
- b) Some decisions by the Authority are classified as “decisions with immediate effect”. These are situations where the Authority considers that a serious breach of licence conditions has arisen and that as a result a licence should be revoked or suspended within five working days or less of the date of the decision document, with no period of grace for corrective action. In these cases the submission of an appeal does not delay the revocation or suspension taking effect. As a labour provider cannot operate without a licence there is provision for these cases to be fast tracked. (Regulations 1(2) and 20)
- c) The labour provider (the appellant) should send a notice of appeal to the Appeals Secretariat so that it is received not later than 20 working days (10 for “decisions with immediate effect” cases) after the date of the Authority’s decision document. The notice must give the grounds for the appeal. (Regulation 6)
- d) Except in relation to a “decision with immediate effect”, lodging an appeal has the effect of putting the Authority’s decision on hold. It will not take effect until a date determined by the Appointed Person. (Regulation 5)
- e) The secretariat will acknowledge the appeal and send a copy to the Authority. (Regulation 7)
- f) The Authority has 20 working days beginning with the date when it received a copy of the appeal, in which to reply. If the Authority seeks to defend the disputed decision it must reply to each of the grounds of appeal. If the Authority does not wish to defend the disputed decision the Appointed Person must uphold the appeal. (Regulations 9 and 10)
- g) The secretariat will acknowledge the reply and send a copy to the Appellant. (Regulation 11)
- h) The parties are informed that if either of them want the appeal to be determined without an oral hearing they must notify the secretariat as soon as possible. If the parties agree to opt out of an oral hearing and provided the Appointed Person does not consider that a hearing is necessary, the Appointed Person may take a decision on the written evidence without an oral hearing. (Regulations 11 and 15)
- i) If the Appointed Person determines the appeal without a hearing, he or she must send notice of the decision and a statement of the reasons for the decision to the appellant and the Authority. The notice must

specify the date from which the decision is to have effect. (Regulation 22)

- j) If a hearing is required, the secretariat must fix a date for the hearing. This must be done within 20 working days of the date on which the Authority's reply was received. The hearing must not be less than 15 working days after the date of the notice informing the parties of the date of the hearing. (Regulation 16)
- k) The hearing must be in public unless the Appointed Person determines that it is appropriate, fair and reasonable for all or part to be in private. Both the appellant and the Authority may appear or be represented or assisted at the hearing. They may give evidence, call witnesses, question witnesses, make submissions on evidence and issues in the appeal. (Regulation 19)
- l) The Appointed Person may announce his or her decision at the end of the hearing. In all cases the Appointed Person must provide a signed and dated written statement of the reasons for his or her decision. The record of the decision must specify the date from which the decision is to take effect. (Regulation 22)
- m) The Regulations provide for an expedited procedure to be applied in cases arising from decisions with immediate effect. This requires the case to be determined within 35 working days of the date on which the notice of appeal is received by the secretariat unless the Appointed Person decides that in the interests of justice this should not apply. (Regulation 20)

## APPENDIX 2

### ESTIMATED NUMBER OF APPEALS

In each case the estimate covers a four year period.

**Table 1 The estimated number of appeals based on Defra's original assumptions in the Partial Regulatory Impact Assessment on the Appeals Regulations**

	Number of applications to the Authority per year	Number of applications refused and licences withdrawn /modified by Authority	Number per year refused and appealing	Number refused and appealing over 4 years
Initial licence	4,000 (year 1 only)	400	200 (year 1 only)	200
Application for transfer of licence (assuming applications in respect of 10% of estimated 3600 licences each year)	360	36	18	72
Application for licence to be renewed	3,500 (12 month period spanning years 3 and 4)	350	175 (12 month period spanning years 3 and 4)	175
Licence revoked / modified by Authority (assuming 10% of estimated 3600 licences withdrawn /modified over 4 years)		90	45	180
New entrants licence applications	500 (years 2 – 4 only)	50	25 (years 2 – 4 only)	75
<b>Total number of appeals</b>				<b>702</b>

**Table 2 The estimated number of appeals based on the current Defra estimate of the number of labour providers and the Authority’s proposed procedure**

This model assumes that there will be 1,000 initial applications. This figure is derived from research undertaken for Defra and is the number used by the Authority in the Partial Regulatory Assessment on its Licensing Conditions Rules. Once a licence has been issued, the labour provider will not have to apply for a new licence but will have to confirm annually that nothing has changed and will have to pay an annual licence fee. If the fee is not paid, the licence will be revoked. Instead of having to undergo an audit to obtain a new licence, the labour provider will be inspected periodically and if serious deficiencies are discovered, the licence will be modified or revoked. For the purpose of this exercise, it is assumed that each year 5% of licences will be revoked or modified each year (instead of over the course of the four year period). The “application for licence to be renewed row has been deleted from this table.

	Number of applications to the Authority per year	Number of applications refused and licences withdrawn /modified by Authority	Number per year refused and appealing	Number refused and appealing over 4 years
Initial licence	1000 (year 1 only)	100	50 (year 1 only)	50
Application for transfer of licence (assuming applications in respect of 5 % of estimated 950 licences each year)	95	10	5	20
Licence revoked / modified by Authority (assuming 5% of estimated 950 licences withdrawn /modified each years)		48	24	96
New entrants licence applications	150 (years 2 – 4 only)	15	8 (years 2 – 4 only)	24
<b>Total number of appeals</b>				<b>190</b>

**Table 3 The estimated number of appeals based on the assumptions used in Table 2 and the Association of Labour Providers' suggestion that only 2% of applications will be turned down and only 2% of those affected will appeal.**

	Number of applications to the Authority per year	Number of applications refused and licences withdrawn /modified by Authority	Number per year refused and appealing	Number refused and appealing over 4 years
Initial licence	1000 (year 1 only)	20	1 (year 1 only)	1
Application for transfer of licence (assuming applications in respect of 5 % of estimated 950 licences each year)	95	2	0	0
Licence revoked / modified by Authority (assuming 5% of estimated 950 licences withdrawn /modified each years)		48	1	4
New entrants licence applications	150 (years 2 – 4 only)	3	0 (years 2 – 4 only)	0
<b>Total number of appeals</b>				<b>5</b>

**COSTS FOR THE AUTHORITY**

1. Table 1 gives an estimated breakdown of the cost to the Authority, including travel, overnight accommodation and subsistence when a member of staff has to travel to a hearing and legal costs where appropriate. It is assumed that:

- a) the Authority's employees involved in the work will be equivalent to Executive Officers, Higher Executive Officers and Grade 7s in the Civil Service (Civil Service terminology is used below);
- b) it will take an Executive Officer 4 hours and a Higher Executive Officer 8 preparing a reply to an appeal and taking a view on whether to request an oral hearing;
- c) in cases with no oral hearing, no amendments are made to the appeal or the reply and no additional particulars or documents are requested by the Appointed Person;
- d) an oral hearing lasts one 7-hour day;
- e) an Executive Officer will spend 8 hours undertaking preparatory work in advance of an oral hearing;
- f) a Higher Executive Officer will attend an oral hearing and will require 8 hours preparation time;
- g) a Grade 7 officer will spend 2 hours on a case going to an oral hearing;
- h) the Higher Executive Officer will spend 7 hours in total on average travelling to and from each hearing and this will count as working time as travel will normally fall outside normal working hours;
- i) the Authority will take legal advice if a case does not go to an oral hearing;
- j) the Authority's legal advice will be provided by private sector lawyers on a case by case basis;
- k) the legal adviser will spend 4 hours on a case not going to an oral hearing. Where a case goes to an oral hearing he / she will spend 5 hours preparing for an oral hearing and will attend the hearing.

**Table 1 Estimated cost of an appeal to the Authority**

	Rate per hour £ (a)	Average case –no oral hearing		Average case – oral hearing required (one day)	
		Hours spent (b)	Cost £ (a x b)	Hours spent (c)	Cost £ (a x c)
Authority's Executive Officer	23	4	92	12	276
Authority's Higher Executive Officer	26	8	208	30	780
Authority's Grade 7	41			2	82
Authority's legal adviser	200	4	800	12	2400
<b>Authority's staff and legal cost per case</b>			<b>1,100</b>		<b>3,538</b>
	Cost per hearing	Staff expenses		Staff expenses	
Travel, hotel, subsistence	150		NIL		150
<b>Total cost per case</b>			<b>1,100</b>		<b>3,688</b>

2. On the assumption that half of the estimated 200 cases are determined without an oral hearing, the total cost over the four year period under **option 2** is:

$$\begin{aligned} \text{£1,100} \times 100 &= 110,000 \\ \text{£ 3,688} \times 100 &= \text{£368,800} \\ \text{TOTAL} &= \quad \quad \quad \text{£478,800} \end{aligned}$$

3. Under option 3 all of the 200 cases would be determined by oral hearing and the total cost over the four year period is:

$$\text{£ 3,688} \times 200 = \text{£737,600}$$

**COSTS FOR THE GOVERNMENT**

*Secretariat staff costs*

1. Table 1 gives an estimated breakdown of Secretariat staff costs, including travel, overnight accommodation and subsistence when a member of the Secretariat has to travel to a hearing. It is assumed that:

- a) each action (receipt of document / acknowledgement of documents and copying document to parties) will, on average, require 1 hour of staff time at Administrative Officer level and 0.5 hour at Executive Officer level;
- b) once it is apparent that a case is going to a hearing the Higher Executive Officer spends 3 hours reading the papers received to date;
- c) in cases with no oral hearing, no amendments are made to the appeal or the reply and that no additional particulars or documents are requested by the Appointed Person;
  - i. in a case with no oral hearing there will be six “actions”
  - ii. receiving and logging in an appeal;
  - iii. acknowledging the appeal and copying it to the Authority;
  - iv. receiving and logging in the reply;
  - v. acknowledging the reply and copying it to the Appellant (in both cases informing the parties that if they want the appeal determined without an oral hearing, they must notify the secretariat as soon as possible );
  - vi. informing the Appointed Person that both parties have agreed that there should be no oral hearing ;
  - vii. copying the Appointed Persons’ decision to the parties.
- d) in cases going to an oral hearing, either the appeal or the reply is amended once and one party is required to produce additional material;
  - i. in a case with an oral hearing there will be 16 “actions”
  - ii. receiving and logging in an appeal;
  - iii. acknowledging the appeal and copying it to the Authority;
  - iv. receiving and logging in the reply;
  - v. acknowledging the reply and copying it to the Appellant (in both cases informing the parties that if they want the appeal determined without an oral hearing, they must notify the secretariat as soon as possible);
  - vi. receiving one amendment to the appeal **or** the reply;
  - vii. copying the amendment to the other party;
  - viii. receiving request for an oral hearing and informing the Appointed Person that a request for an oral hearing has been received;
  - ix. requesting further information from one party;

- x. acknowledging receipt of the further material and copying it to the other party;
- xi. making arrangements for the oral hearing;
- xii. notifying the parties of the arrangements for the hearing;
- xiii. receiving information from appellant re attendance at hearing etc
- xiv. acknowledging receipt and copying the information to the Authority;
- xv. receiving information from Authority re attendance at hearing etc
- xvi. acknowledging receipt and copying the information to the Appellant;
- xvii. copying the Appointed Persons' decision to the parties.
- xviii. an oral hearing lasts one 7-hour day;
- xix. either the Executive Officer or the Higher Executive Officer will attend an oral hearing and they will each attend approximately half of the hearings;
- xx. the Executive Officer or the Higher Executive Officer will require 2-hours preparation time per hearing;
- xxi. the Executive Officer or Higher Executive Officer will spend 7 hours in total on average travelling to and from each hearing and this will count as working time as travel will normally fall outside normal working hours.

**Table 1 Estimated Secretariat staff costs**

	Rate per hour £ (a)	Average case –no oral hearing		Average case – oral hearing required (1 day)	
		Hours spent (b)	Cost £ (a x b)	Hours spent (c)	Cost £ (a x c)
Administrative Officer	19	6	114	16	304
Executive Officer	23	3	69	15	345
Higher Executive Officer	26	1	26	11	286
Senior Executive Officer	32	0	0	1	32
<b>Secretariat staff cost per case</b>			<b>209</b>		<b>967</b>
	Cost per hearing £	Cost of staff plus their travel etc		Cost of staff plus their travel etc	
Travel, hotel, subsistence	150		NIL		150
<b>Total cost per case</b>			<b>209</b>		<b>1,117</b>

NOTE: These costs assume Secretariat staff costs are allocated to other areas of work when secretariat staff are not actively engaged in appeals work and are undertaking other duties.

2. On the assumption that half of the estimated 200 cases are determined without an oral hearing, the total cost over the four year period under **option 2** is:

£209 x 100= £20,900  
 £1,117 x 100 = £111,700  
**TOTAL = £132,600**

3. Under **option 3** all of the 200 cases would be determined by oral hearing and the total cost over the four year period is:

£1,117 x 200= **£223,400**

*Appointed Person costs*

4. The costs of the Appointed Persons and, where relevant the venue for the hearing also need to be estimated. The estimated fee per case is based on the 2004/2005 sitting and preparation, consideration and decision writing rates payable to Part time chairmen of Employment Tribunals rounded up to the nearest ten pounds. It is assumed that:

- a) an average case where there is no oral hearing will provide the Appointed Person with one day's work;
- b) an average case where there is an oral hearing will provide the Appointed Person with two and a half to three day's work (i.e. a hearing lasting one day and one to two days for preparation / producing the decision);
- c) the accommodation for the hearing and related expenses will, on average, be £200 per case which goes to an oral hearing;
- d) the Appointed Person's travel, hotel and subsistence expenses will average £150 a case.

Table 2 gives an estimate of the costs of the Appointed Person and hearing accommodation.

**Table 2. Costs associated with the Appointed Person and the oral hearing (where relevant)**

	Rate per case (£)	Average case – no oral hearing		Average case – oral hearing required	
		Time spent	Cost £	Time spent	Cost £
Preparation/ consideration/writing decision rate	200 for more than 3.5 hours	One day	200	1.5 to 2 days	400
Sitting rate	390 for up to 7 hours	Not applicable		One 7-hour day	390
Accommodation for hearing and related expenses	200	Not applicable			200

Travel, hotel, subsistence (oral hearing only)	150	Not applicable	Nil		150
<b>TOTAL COST</b>			<b>200</b>		<b>1140</b>

5. On the assumption that half of the estimated 200 cases are determined without an oral hearing, the total cost associated with the Appointed Person over the four year period under **option 2** is:

$$\begin{aligned} \text{£}200 \times 100 &= \text{£}20,000 \\ \text{£}1140 \times 100 &= \text{£}114,000 \\ \textbf{TOTAL} &= \textbf{£134,000} \end{aligned}$$

6. Under **option 3** all of the 200 cases would be determined by oral hearing and the total cost over the four year period is:

$$\text{£ } 1140 \times 200 = \textbf{£228,000}$$

7. It is estimated that under **option 2** the total cost to the Government would be **£266,600** and under **option 3** the cost to government would be **£451,400**.

**COSTS FOR A TYPICAL LABOUR PROVIDER BUSINESS**

1. Table 1 below gives the estimated costs of an average appeal with no oral hearing and an appeal which goes to an oral hearing. For these purposes it is assumed that on average:

- a) it will take a labour provider's employee 5 hours to draft an appeal;
- b) the labour provider will spend 2 hours checking / amending it;
- c) the labour provider's employee will spend 3 hours assessing the Authority's response;
- d) the labour provider will also spend 3 hours studying the Authority's response and deciding whether to request an oral hearing.
- e) where an oral hearing is required the labour provider will spend 7 hours preparing for the hearing;
- f) the labour provider's employee will spend 6 hours preparing for the hearing;
- g) the hearing will last 7 hours and both the labour provider and his employee will attend;
- h) The labour provider's lawyer will spend 4 hours on a case which does not go to an oral hearing and 12 hours on the case where there is an oral hearing (5 hours preparing and 7 hours at the hearing).

**Table 1 Estimated cost of an appeal to a labour provider**

	Rate per hour £ (a)	Average case –no oral hearing		Average case – oral hearing required (one day)	
		Hours spent (b)	Cost £ (a x b)	Hours spent ( c )	Cost £ (a x c)
Labour provider	30	5	150	19	570
Labour provider's employee	20	8	160	21	420
Labour provider's lawyer	200	4	800	12	2400
<b>Total cost per case</b>			<b>1110</b>		<b>3390</b>

### ***Costs for the labour provider industry***

2. Assuming that there are 200 appeals over the initial four years the cost to the labour provider industry can be estimated. Under **option 2** if half the appeals are determined without an oral hearing, the total cost to the industry is:

£1110 x 100 =	£111,000
£3390 x 100 =	£339,000
<b>TOTAL =</b>	<b>£450,000</b>

11.22 Under **option 3** all of the 200 appeals would be determined by oral hearing and the total cost over the four year period is:

$$£ 3390 \times 200 = \mathbf{£678,000}$$

**EQUALITY AND FAIRNESS: UNDER-REPRESENTED GROUPS**

1. As the legislation and the proposals affect the public directly, it is necessary to test whether either option will have any impact on under-represented groups e.g. on account of their race, faith, gender or disability.
2. Any direct or indirect discrimination or negative impact on certain racial groups or faiths, male or female labour providers or labour providers with a disability would be more likely to arise from the Authority's licensing arrangements rather than from Appeals Regulations. It is for the Authority to ensure that its Rules and operational procedures do not give rise to discrimination or a negative impact.

*Race equality*

3. People from different racial groups may encounter a **language barrier** when appealing against a decision of the Authority. A Guidance booklet for appellants is being produced. Initially copies will be made available in English and Welsh only. However, Defra will liaise with the Authority to ascertain what additional languages would be useful. (Any labour provider who wishes to appeal will have had to apply to the Authority for a licence). If a case goes to an oral hearing, an interpreter will be provided to assist an appellant or witness whose English skills are insufficient to ensure a fair hearing.

4. The Guidance booklet, the Application form and any other forms produced by the secretariat will be available electronically. This should make it easy for labour providers who are located overseas to obtain copies.

*Faith equality*

5. It is most unlikely that the Appeals procedure would discriminate against anyone on account of his or her faith. The timescale for actions is based on working days. The main Christian holidays would not count for this purpose whereas, feast days of other faiths would be classified as working days. However, if an appellant had difficulty meeting a deadline for this reason it is anticipated that the Appointed Person would consider an application for an extension of time sympathetically.

*Gender equality*

6. The Appeal procedure will apply equally to all appellants irrespective of gender.

*Disability equality*

7. The appeal procedure will apply equally to all appellants whether or not they have a disability.

8. A large print copy of the Guidance for Appellants and the Application Form could be made available on request for any visually impaired persons. Braille versions could be prepared but again, liaison with the Authority would enable Defra to judge whether there was likely to be any demand for this.

9. Where an oral hearing is arranged the secretariat will have to ensure that the venue is accessible to and has suitable toilet facilities for a party or a witness who has impaired mobility and that there are e.g. loop facilities if these are required.

**RURAL PROOFING CHECKLIST**

1. *Will the policy affect the availability of public or private services?*

The Regulations impact on the provision of labour in the areas covered by the 2004 Act but only in those situations where a labour provider wishes to appeal against a decision of the Authority. Impact on services is expected to be very small.

2. *Is the policy to be delivered through existing service outlets such as schools, banks and GP surgeries?*

No.

3. *Will the cost of delivery be higher in rural areas where clients are more widely dispersed or economies of scale are harder to achieve?*

No.

4. *Will the policy affect travel needs or the ease and cost of travel?*

No.

5. *Does the policy rely on communicating information to clients?*

Only to the extent that a labour provider will need to be aware of the appeal arrangements but it is anticipated that the Authority will notify all labour providers of the appeal arrangements when delivering its decision on an application etc.

6. *Is the policy to be delivered by the private sector or through a public – private partnership?*

The appeal system will be operated by the public sector.

7. *Does the policy rely on infrastructure for delivery?*

No

8. *Will the policy impact on rural businesses, including the self-employed?*

The Appeal arrangements will be available to labour providers operating and / or based in rural areas in the same way that they are available to those in urban areas. Some labour providers are self-employed.

9. *Will the policy have a particular impact on land-based industries and therefore on rural economies and environments?*

Yes. The gangmaster licensing arrangements may have a significant impact on land-based industries and other operating in rural areas but the impact of the Appeals regulations is likely to be minimal.

*10. Will the policy affect those on low wages or in part time or seasonal employment?*

As for question 9 above.

*11. Is the policy targeted at the disadvantaged?*

One of the objectives of the gangmasters legislation is to protect vulnerable workers from exploitation. However, the Appeals Regulations will have a minimal role to play in this.

*12. Will the policy rely on local institutions for delivery?*

No.

*13. Does the policy depend on new buildings or development sites?*

No.

*14. Is the policy likely to impact on the quality and character of the natural or built landscape?*

No

*15. Will the policy impact on people wishing to reach and use the countryside as a place for recreation and enjoyment?*

No.

**ENVIRONMENTAL IMPACT CHECKLIST**

1. *Will the policy option lead to a change in the emission of greenhouse gases?*
2. *Will the policy option be vulnerable to the predicted effect of climate change?*
3. *Will the policy option lead to a change in the financial costs or the environmental and health impacts of waste management?*
4. *Will the policy option impact significantly on air quality?*
5. *Will the policy option involve any material change to the appearance of the landscape or townscape?*
6. *Will the proposal change the degree of water pollution, levels of abstraction of water or exposure to flood risk?*
7. *Will the policy option disturb or enhance habitat or wildlife?*
8. *Will the policy option affect the number of people exposed to noise or the levels to which they are exposed?*

The answer to questions 1 - 8 is no.

The appeal arrangements will not impact in any of these areas.

**SUSTAINABLE DEVELOPMENT**

1. The goal of sustainable development is to enable all people throughout the world to satisfy their basic needs and to enjoy a better quality of life, without compromising the quality of life of future generations.
2. Sustainable development impacts on the environment, economy and society. It should protect and enhance the **environment** and result in an efficient use of resources and energy. In **economic terms**, development should be sustainable, innovative, productive and promote high levels of employment. It should result in a **society** which is just and socially inclusive comprising sustainable communities give rise to personal well being.
3. The purpose of the Appeals Regulations is to ensure that where a labour provider's application has been rejected by the Authority , it has modified or revoked a licence or a licence has been made subject to conditions which the labour provider considers unacceptable, the labour provider can appeal to a third party. The 2004 Act requires an appeal to be determined by an Appointed Person. The regulations aim to provide a just system for resolving disputes. To this very limited extent they should contribute to sustainable development.