

Draft Regulations laid before Parliament under section 25(5) of the Gangmasters (Licensing) Act 2004, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2005 No.

EMPLOYMENT

The Gangmasters (Licensing Authority) Regulations 2005

Made - - - - [] 2005
Coming into force - - 1st April 2005

The Secretary of State, in exercise of the powers conferred upon her by sections 1(5) and 25(2) of the Gangmasters (Licensing) Act 2004 (1), makes the following Regulations, a draft of which has been approved by a resolution of each House of Parliament:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Gangmasters (Licensing Authority) Regulations 2005, and shall come into force on 1st April 2005.

(2) In these Regulations—

“the 1973 Act” means the Employment Agencies Act 1973 (2);

“the 2004 Act” means the Gangmasters (Licensing) Act 2004;

“the Board” means the Board established by regulation 3(1);

“the chairman” means the chairman appointed pursuant to regulation 4(2);

“committee” means a committee established by the Board pursuant to regulation 6(1).

“the deputy chairman” means a deputy chairman appointed pursuant to regulation 4(3);

“*ex officio* member” means a member of the Board appointed pursuant to regulation 4(9);

“representative member” means a person appointed as a representative member of the Board pursuant to regulation 4(6);

Body corporate and application of seal

2.—(1) The Authority shall be a body corporate.

(2) The application of the seal of the Authority shall be authenticated by the signature of—

(1) 2004 c.11.
(2) 1973 c. 35.

- (a) the chairman, or the deputy chairman acting in the absence of the chairman; or
 - (b) any other person who has been authorised by the Board (whether generally or specially) for that purpose.
- (3) A document purporting to be—
- (a) duly executed by the Authority under its seal,
 - (b) issued by the Authority, or
 - (c) signed on its behalf,

shall be received in evidence and shall, unless the contrary is proved, be taken to be so executed, issued or signed.

Role of the Board

- 3.—(1) The Authority shall have a Board which shall direct its affairs.
- (2) The Board shall ensure that the Authority properly discharges its functions and complies with the requirements of these Regulations.

Membership of the Board

- 4.—(1) The members of the Board shall consist of a chairman, and not more than –
- (a) nineteen representative members, and
 - (b) nine *ex officio* members.
- (2) The chairman shall be appointed by the Secretary of State in consultation with the Minister of Agriculture and Rural Development for Northern Ireland.
- (3) Within three months of the date on which the Authority commences operations and at the first Board meeting after every third anniversary of that date, the Board shall appoint a representative member to be the deputy chairman, who shall act as the chairman in the absence of the chairman.
- (4) Should the deputy chairman resign from his post as deputy chairman, the Board shall appoint a replacement to act as deputy chairman until the next deputy chairman is appointed under paragraph (3).
- (5) Resignation by a deputy chairman from his post as a representative member shall be taken to be a resignation from his post as deputy chairman.
- (6) Subject to paragraph (8), the representative members shall be appointed by the Secretary of State on the nomination of an organization specified in column 1 of Schedule 1 in accordance with paragraph (7).
- (7) An organization specified in column 1 of Schedule 1 may nominate such number of persons for appointment as representative members as is specified in relation to that organization in column 2 of Schedule 1.
- (8) In the event that an organization specified in Schedule 1 fails, within such reasonable period as the Secretary of State may direct, to nominate the number of persons which by virtue of paragraph (7) it is entitled to nominate, the Secretary of State shall supply the shortfall by appointing such persons as she considers appropriate having regard to the nature of the organization which is otherwise entitled by paragraph (6) to make the nomination.
- (9) The *ex officio* members shall be appointed by the persons specified in column 1 of Schedule 2 in accordance with paragraph (10).
- (10) A person specified in column 1 of Schedule 2 shall appoint such number of *ex officio* members as is specified in relation to that person in column 2 of Schedule 2.

(11) Each representative member and each *ex officio* member shall at all times act in the interests of promoting the proper exercise by the Authority of its functions.

(12) The Ethical Trading Initiative may send a representative to attend any meeting of the Board as an observer, who may contribute to discussion at the invitation of the chair.

(13) In paragraph (12), the “Ethical Trading Initiative” means the company of that name limited by guarantee and incorporated on 9th June 1988.

Tenure of office and remuneration of the Board

5.—(1) Subject to the provisions of this regulation, the chairman and each representative member of the Board shall hold and vacate office in accordance with the terms of their respective appointments.

(2) At the end of the period of appointment, the chairman and each representative member shall continue to hold office until the appointment of his successor takes effect.

(3) The chairman or a representative member may resign from office by notice in writing to the Secretary of State and, upon his resignation, shall send a copy of the notice to the secretary to the Board and (except where he was appointed pursuant to regulation 4(8)) the organization by whom he was nominated for appointment.

(4) The Secretary of State may remove the chairman or any representative member from office if—

- (a) he has without reasonable excuse failed adequately to carry out his functions as chairman or representative member (as the case may be), provided that –
 - (i) he has been given written notice warning him that, unless within a specified period his performance in a specified respect has improved to a specified extent, or to the satisfaction of the Secretary of State, he may be removed from office at the end of that period; and
 - (ii) at the expiry of the period specified in the notice, his performance in the respect specified has not improved to the extent required;
- (b) without reasonable excuse, he has been absent from three consecutive meetings of the Board;
- (c) he has been convicted (whether before or after his appointment or nomination) of a criminal offence and that conviction is not spent for the purposes of the Rehabilitation of Offenders Act 1974(3);
- (d) he is an undischarged bankrupt or his estate has been sequestrated and it has not been discharged, or he has made an arrangement with his creditors, or he is subject to a bankruptcy restriction order;
- (e) he is disqualified from acting as a company director;
- (f) he has failed to comply with the terms of his appointment or nomination; or
- (g) he is otherwise unable or unfit to carry out his functions as a representative member or (as the case may be) as chairman.

(5) The Secretary of State shall inform the appropriate nominating organization of her intention to remove a representative member pursuant to paragraph (4).

(6) The Secretary of State shall consult the Minister of Agriculture and Rural Development for Northern Ireland before removing the chairman pursuant to paragraph (4).

(3) 1974 c. 53.

(7) The Authority shall pay to the members of the Board, and any persons invited to attend a meeting of the Board, such remuneration and allowances as the Secretary of State may determine.

(8) The Board shall appoint an employee of the Authority to be the secretary to the Board.

Committees of the Board

6.—(1) The Board may establish committees and shall appoint the members of any committee it establishes from the members of the Board.

(2) The Board may, to such extent as it may determine, delegate such matters as it considers appropriate to a committee established under paragraph (1).

(3) The Board shall appoint a chairman for each committee and shall determine the quorum and voting arrangements for each committee.

(4) The Authority shall pay to any members of the committee or any persons invited to attend a meeting of the committee such remuneration and allowances as the Secretary of State may determine.

Liaison groups

7.—(1) The Board may establish liaison groups to do any of the following—

- (a) to provide advice to the Board on the operation of the 2004 Act and any Regulations or rules made under it, the extent of compliance with any requirements imposed under the 2004 Act and the effectiveness of any such requirements;
- (b) to assist the Board in keeping under review the activities of persons who act as gangmasters; and
- (c) to provide a forum for communication between the Board and other persons.

(2) Membership of each liaison group shall be at the discretion of the Board.

(3) Each liaison group shall be chaired by a member of the Board.

(4) The Board shall set the terms of reference for each liaison group.

(5) 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.

Proceedings of the Board

8.—(1) Subject to the following provisions of this regulation, the Board may regulate—

- (a) its own procedure; and
- (b) the procedure of its committees.

(2) Subject to paragraph (3), a meeting of the Board shall not be properly constituted unless it is attended for the period of its duration by the chairman, or in his absence the deputy chairman, and at least one half of the representative members.

(3) The quorum may be changed by a motion supported by at least five members of the Board, provided that any new quorum includes the chairman, or in his absence the deputy chairman.

(4) Subject to paragraph (5), a decision to be taken by the Board shall be based on a simple majority of those voting members (including the chairman, or the deputy chairman in the chairman's absence) present at the time the vote is taken.

(5) If the voting members are equally divided, the chairman, or in his absence the deputy chairman, shall have a casting vote, provided that his reasons for casting his vote in the manner chosen are made known to the Board and recorded in the minutes.

(6) The validity of any proceedings of the Board, or any of its committees, shall not be affected by—

- (a) any vacancy among the members of the Board or its committees;
- (b) any vacancy in the office of the chairman of the Board;
- (c) any defect in the appointment or nomination of any member of the Board;
- (d) any defect in the appointment of the chairman or deputy chairman of the Board; or
- (e) any defect in the appointment of any member or chairman of a committee.

(7) If the chairman, is in any way directly or indirectly interested in a matter to be discussed or decided by the Board, he shall, as soon as possible after the relevant circumstances have come to his knowledge, disclose the nature of this interest to a meeting of the Board, and shall not take part in any discussion or decision with respect to that matter.

(8) Where paragraph (7) applies, the deputy chairman (or, in his absence, a representative member agreed by the Board) shall act as chairman during that part of the meeting when the matter at issue is being discussed or determined.

(9) If the deputy chairman, while acting as chairman, is in any way directly or indirectly interested in a matter to be discussed or decided by the Board, he shall, as soon as possible after the relevant circumstances have come to his knowledge, disclose the nature of this interest to a meeting of the Board, and shall not take part in any discussion or decision with respect to that matter.

(10) Where paragraph (9) applies, a representative member agreed by the Board shall act as chairman during that part of the meeting when the matter at issue is being discussed or determined.

(11) Any disclosure made under paragraph (7) or (9) shall be recorded in the minutes of the Board.

Record of proceedings

9. The Board must make arrangements for the keeping of proper records of the following—

- (a) its proceedings;
- (b) the proceedings of its liaison groups; and
- (c) the proceedings of its committees.

Staff of the Authority

10.—(1) The Authority shall employ a chief executive who shall be responsible to the Board for carrying out the Authority's functions and the management of its employees.

(2) The Secretary of State shall appoint the first chief executive, on such terms and conditions as he may determine.

(3) The Board shall appoint each subsequent chief executive, but before doing so, shall obtain the approval of the Secretary of State as to the suitability of the person to be appointed and the terms and conditions of the appointment.

(4) The Authority shall employ such other staff as it thinks fit on terms and conditions determined by the Board and approved by the Secretary of State.

Remuneration etc. of employees, agents or consultants

11.—(1) The Authority shall pay its employees, agents or consultants such remuneration and allowances as it may, with the consent of the Secretary of State, determine.

(2) The Authority shall—

- (a) pay, or make payments in respect of, such pensions or gratuities to or in respect of any of its employees or former employees as it may, with the consent of the Secretary of State, determine; and
- (b) provide for such schemes (whether contributory or not) as it may determine, with the consent of the Secretary of State, for the payment of pensions or gratuities to or in respect of its employees or former employees.

(3) References in paragraph (2) to pensions and gratuities include references to pensions or gratuities by way of compensation to or in respect of employees who suffer loss of employment or loss or diminution of emoluments or other recoverable loss arising from or in connection with their employment.

Licensing functions and the register of licences

12.—(1) For the purposes of the exercise of its functions under sections 1, 7, 8 and 9 of the 2004 Act and rules made under section 8, in determining—

- (a) the criteria for assessing the fitness of an applicant for a licence or a specified person, and
- (b) the conditions of a licence and any modification of those conditions,

the Authority shall have regard to the principle that a person should be authorised to act as a gangmaster only if and in so far as his conduct, and the conduct of a specified person, comply with the requirements of paragraph (2).

(2) The requirements referred to in paragraph (1) are —

- (a) the avoidance of any exploitation of workers as respects their recruitment, use or supply; and
- (b) compliance with any obligations imposed by or under any enactment in so far as they relate to, or affect the conduct of, the licence holder or a specified person as persons authorised to undertake certain activities.

(3) In framing licence conditions dealing with the recruitment or supply of workers, the Authority shall ensure that, where a gangmaster would be an employment agency or employment business within the meaning of the 1973 Act if section 27 of the 2004 Act were not in force, the licence conditions shall include provisions imposing on the licensee, or (as appropriate) other specified persons, requirements corresponding to those which would apply under the 1973 Act if section 27 were not in force in so far as the requirements appear to the Authority to be appropriate in the circumstances.

(4) Where the Authority has made provision in rules under section 8(2)(f) of the 2004 Act for a licence to be granted on a provisional basis, it shall assume in relation to any application for such a licence that the applicant or a specified person is a fit person to be granted the licence or specified in the licence as the case may be unless, on the basis of information held or obtained, it has reasonable grounds to believe otherwise.

(5) In this regulation “specified person”, in relation to any given licence, means any person proposed to be specified in the licence as a person authorised to undertake certain activities by virtue of section 7(3)(b) of the 2004 Act.

(6) The Authority shall ensure that the register established by section 11(1) of the 2004 Act is available for public inspection at all reasonable times and free of charge.

Accounts

13.—(1) The Authority shall—

- (a) keep proper accounts and proper records for the purposes of those accounts; and

- (b) prepare a statement of accounts in respect of each financial year.
- (2) The statement of accounts shall be in such form, and contain such information, as the Secretary of State may direct.
- (3) The Authority shall, within such period after the end of each financial year as the Secretary of State may direct, send a copy of the statement of accounts relating to that year to the Secretary of State and to the Comptroller and Auditor General.
- (4) The Comptroller and Auditor General shall—
 - (a) examine, certify and report on every statement of accounts sent to him by the Authority under this paragraph; and
 - (b) lay copies of each such statement and of his report on it before each House of Parliament.

Publication of annual report and accounts

- 14.**—(1) The Authority shall, within such period after the end of the financial year as the Secretary of State shall direct, produce an annual report which shall include its annual accounts and a report on its activities.
- (2) The annual report shall be in such form and contain such information as may be specified in any direction given by the Secretary of State.
 - (3) The Secretary of State shall lay a copy of the annual report before each House of Parliament and shall arrange for copies of the annual report to be published in such manner as she considers appropriate.

Other reports provided to the Secretary of State

- 15.**—(1) The Authority shall, pursuant to any direction given by the Secretary of State and at such other times as it sees fit, report to the Secretary of State on the operation and effectiveness of its activities, the operation of the 2004 Act, any general trends in the activities of gangmasters and any other matters with respect to the activities of gangmasters which it considers are such as to deserve consideration by the Secretary of State.
- (2) The Authority shall publish each report, unless the report is contained in the annual report required to be published by the Secretary of State under regulation 14(3).

Parliamentary Under Secretary of State,
Department for Environment, Food and Rural
Affairs

[] 2005

SCHEDULE 1

Regulation 4(6) and (7)

Organizations Eligible to Nominate representative members of the Board

| Organization | Number of nominees for appointment as members of the Board |
|---|---|
| Association of Labour Providers | 2 |
| Recruitment and Employment Confederation | 1 |
| National Farmers Union | 2 |
| NFU Scotland | 1 |
| Trades Union Congress | 2 |
| Transport and General Workers Union | 2 |
| British Retail Consortium | 1 |
| Fresh Produce Consortium | 1 |
| Food and Drink Federation | 1 |
| Sea Fish Industry Authority | 1 |
| Shellfish Association of Great Britain | 1 |
| Association of Chief Police Officers | 1 |
| Police Superintendents Association | 1 |
| Local Authority Coordinators of Regulatory Services | 1 |
| National Association of Citizens Advice Bureaux | 1 |

SCHEDULE 2

Regulation 4(9) and (10)

Appointment of *ex officio* members of the Board

| Persons appointing ex officio members of the Board | Number of ex officio members of the Board to be appointed |
|---|--|
| Secretary of State for Home Affairs | 1 |
| Secretary of State for Work and Pensions | 1 |
| Secretary of State for Environment, Food and Rural Affairs | 1 |
| The Commissioners of Inland Revenue and the Commissioners of Customs and Excise jointly | 1 |
| Secretary of State for Trade and Industry | 1 |
| The Director General of the Health and Safety Executive | 1 |
| The Scottish Ministers | 1 |

| Persons appointing ex officio members of the Board | Number of ex officio members of the Board to be appointed |
|---|--|
| The National Assembly for Wales | 1 |
| The Minister for Agriculture and Rural Development for Northern Ireland | 1 |

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the constitution, structure and other matters relating to the operation of the Gangmasters Licensing Authority. The Authority was established by section 1 of the Gangmasters (Licensing) Act 2004 (the 2004 Act), which came into force on 1st December 2004, and will commence operations on 1st April 2005 (the date of entry into force of these Regulations).

Regulation 2 provides for the Authority to be a body corporate.

Regulation 3 provides for the Authority to have a Board, and for the role of the Board.

Regulation 4 provides for membership of the Board. There are to be nineteen “representative members” nominated for appointment by the various organizations specified in column 1 of Schedule 1 and nine *ex officio* members appointed by the Minister, Secretary of State, Director General or Commissioner responsible for the various government departments and bodies specified in column 1 of Schedule 2, the Scottish Ministers and National Assembly for Wales. It also makes provision for the appointment of the chairman and deputy chairman.

Regulation 5 makes provision for the tenure of office of Board members, including the chairman, and the grounds on which the chairman or a representative member can be removed from office. The organization which nominated the representative member must be informed of the removal of its nominated member. Regulation 5(7) provides for the payment of remuneration and allowances to members of the Board and persons invited to Board meetings, subject to the Secretary of State’s approval.

Regulation 6 enables the Board to establish committees and makes provision for the payment of remuneration and allowances to committee members and persons invited to attend committee meetings.

Regulation 7 enables the Board to establish liaison groups, to advise and assist the Board and enables the Authority to pay remuneration and allowances to members of liaison groups.

Regulations 8 and 9 make provision in relation to the procedure of the Board and records of its proceedings.

Regulation 10 provides for the employment of a chief executive and other staff and gives the Authority discretion regarding the terms and conditions of their employment of staff, subject to the Secretary of State’s approval.

Regulation 11 provides for the payment of remuneration and allowances to employees, agents and consultants of the Authority.

Regulation 12(1) establishes a general principle governing the determination of criteria for assessing the fitness of applicants for licences and others and the terms of licence conditions. Regulation 12(3)

provides for requirements under the Employment Agencies Act 1973 (the 1973 Act) to be reflected in licence conditions, in so far as they would apply were it not for section 27 of the 2004 Act, which excludes the provisions of the 1973 Act relating to employment agencies and business as far as they relate to activities which must be licensed under the 2004 Act. Regulation 12(4) requires the Authority, in considering an application for a licence to be granted on a provisional basis, to assume the fitness of the applicant to hold a licence unless the Authority has reasonable grounds to believe the applicant is not fit.

Regulation 13 provides for accounts of the Authority and auditing arrangements. Regulation 14 deals with publication of the accounts and annual report. Regulation 15 gives the Authority power to prepare other reports and a duty to do so if so directed by the Secretary of State.

A Regulatory Impact Assessment has been prepared and placed in the library of each House of Parliament. Copies can be obtained from the Agricultural Resources Team at the Department for Environment, Food and Rural Affairs, Ergon House, Horseferry Road, London SW1P 2AL.