

**EXPLANATORY MEMORANDUM TO
THE GANGMASTERS (LICENSING CONDITIONS) RULES 2006**

2006 No. 660

1. This explanatory memorandum has been prepared by the Gangmasters Licensing Authority and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 The Rules establishes arrangements to license gangmasters covered by the Gangmasters (Licensing) Act 2004 and the conditions that will apply.

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

3.1 None.

4. Legislative Background

4.1 The Gangmasters (Licensing Conditions) Rules are made under the Gangmasters (Licensing) Act 2004. The Act established the Gangmasters Licensing Authority to set up and operate a licensing scheme for gangmasters. The Rules apply to gangmasters operating in the agricultural, horticultural work and food, fish and shellfish processing and packaging. Shellfish gathering is excluded until 1 October. Separate licensing arrangements for shellfish gathering will be brought forward in advance of that date.

4.2 Under section 8 of the Act, the Gangmasters Licensing Authority has the power to makes rules to establish the necessary arrangements to operate the licensing scheme and the conditions that will apply

4.3 This Rules Order is part of a series of secondary legislation made under the Act. Defra is responsible for:

- The Gangmasters (Licensing Authority) Regulations 2005. These Regulations provided for the establishment of the Gangmasters Licensing Authority and made provisions as to the status and constitution of the Authority, the appointment of member and payment of remuneration and allowance to its members.
- The Gangmasters Licensing (Exclusions) Regulations. These will exclude certain work from the scope of the Act and specifying circumstances in which a licence is not required.
- The Gangmasters (Appeals) Regulations. These will provide an appeal mechanism for gangmasters whose application is rejected.
- Regulations making provisions as to what constitutes “reasonable steps” which a person should take to satisfy himself that a gangmaster was acting under the authority of a valid licence.

5. Extent

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 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. The Bill attracted cross party support and received Royal Assent on 8 July 2004.

7.2 The primary objective of the Act is to curb exploitative activities of gangmasters. While some gangmasters operating in this area run reputable businesses it is clear that many operate illegally and exploit their workforce. Secondary objectives are to:

- Reduce exchequer fraud and various other forms of non-compliance often associated with abuse of workers by business in this sector
- Increase exchequer revenue by promoting employment of legitimate workers
- Promote fair competition amongst labour providers

7.3 The Act attracted considerable publicity and there was been significant public interest in the draft Gangmasters (Exclusions) Regulations. Stakeholders have also had a keen interest in the development of the Rules.

7.4 The Regulatory Impact Assessment (see paragraph 8.1 below) summaries the responses received to consultation on the draft Rules. A full summary of the responses is on the Internet at: <http://www.gla.gov.uk/consultation.htm> or is available from the Authority. Contact details are available at paragraph 9.1.

Main Provisions of the Rules and Schedule

Rule 2 defines the principal authority.

Rule 3 specifies information to be disclosed by an applicant and procedure to be followed in applying for a licence.

Rule 3 (12) prescribes that the Authority may impose addition conditions to be attached to a licence as it considers appropriate either at point of issue or when the licence is in use.

Rule 4 stipulates that the licence is subject to certain conditions.

Rule 4 (2) requires a licence holder to act in a fit and proper manner. The criteria to be considered when assessing fit and proper is set out at Rule 5.

Rule 4 (3) prescribes the time limit for notifying the Gangmasters Licensing Authority of changes in details.

Rule 4 (4) requires licence holders to notify the Authority within 20 working days if the persons named or if the positions otherwise specified on the licence change and persons named must also disclose any details under Rule 3 (3) at the request of the Authority.

Rule 4 (5) requires the licence holder to notify the Authority at the point of renewal of their turnover for the previous financial year.

Rule 4 (6) requires licence holders to notify the Authority as soon as possible if they suspect their licence has been used by someone not authorised to act on behalf of that licence holder.

Rule 4 (7) requires the licence holder to provide details on request to any constable, enforcement or compliance officer.

Rule 4 (8) prescribes the circumstances in which a licence holder must disclose details of their licence.

Rule 4 (9) prescribes that the Authority may inspect the business at any reasonable time.

Rule 4 (10) stipulates that the gangmaster must comply with the conditions in the Schedule.

Rule 5 specifies that a business is deemed to be fit and proper if they comply with the criteria in the Rules and Schedule and obligations contained in regulations 12(2) of the Gangmasters (Licensing Authority) Regulations 2005. The obligations in the Gangmasters (Licensing Authority) Regulations 2005 require compliance with enactments that relate to, or affect the conduct of a licence holder. The conditions in the Rules and obligations from other enactments are drawn together in the Authority's Licensing Standards. The Licensing Standards set out the minimum standard required of a gangmaster to satisfy the Gangmasters Licensing Authority in order to qualify for a licence under the Act and to remain compliant during the period the licence is in force. The Licensing Standards are included in the Full RIA.

Rule 6 specifies when a new application will be required.

Rule 7 prescribes the application and renewal fee for a licence.

Rule 8 prescribes the charge for an inspection at the point of application.

Rule 9 provides for electronic and other communications.

Schedule

Section 27 of the Gangmasters (Licensing) Act 2004 excludes Employment Agencies and Employment Business from the provisions of the Employment Agencies Act 1973 (and associated secondary legislation) in so far as they are undertaking activities for which a licence is required. The Schedule includes relevant provisions corresponding

to those that would apply under the 1973 Act if section 27 were not in force. This is to ensure consistency for gangmasters supplying in the licensed sectors and other sectors. Where a provision replicates the Employment Agencies legislation, the corresponding regulation is noted.

Paragraph 1 provides a definition for a connected person.

Paragraph 2 prevents a licence holder charging a fee for work finding services. (Based on Regulation 5 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003)

Paragraph 3 prevents a licence holder requiring a worker to use other services or hiring or purchasing goods, provided by the licence holder or a person connected with it, as a condition of work-finding services. (Based on Regulation 5 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003)

Paragraph 4 prevents licence holder from including a term in a contract, or otherwise, to threaten or subject a worker to any disadvantage if the worker terminates or gives notice to terminate any contract agreed with the gangmaster, or is employed or proposes to be employed or proposes to be employed by another person. In addition, the licence holder cannot require him to identify the proposed future employer. (Regulation 6 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003)

Paragraph 5 prohibits a licence holder from knowingly introducing or supplying a worker carry out the duties of any worker involved in an official industrial action, or the duties of any worker employed by the labour user who is carrying out the duties of the individual involved in that industrial action. (Regulation 7 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003)

Paragraph 6 provides that licence holder may not pay or make arrangements for the payment of the wages of any worker he has introduced or supplied to a labour user who has then employed the worker. (Regulation 8 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003)

Paragraph 7 places certain restrictions on the permissible terms, in a contract between a licence holder and a labour user, which concern the worker taking up employment with the labour user, any person to whom the labour user has introduced him, or being supplied to the labour user by another gangmaster. (Regulation 10 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003)

Paragraph 8 provides that a licence holder must not, through a term of a contract or any other arrangement, withhold or threaten to withhold from the worker any payment in respect of any work undertaken by that worker on certain grounds. (Regulation 12 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003)

Paragraph 9 requires that, before supplying a worker to labour user, the licence holder must obtain his/her agreement to the terms that will apply and makes provision for variation of those terms. (Regulation 14 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003)

Paragraph 10 sets out the terms about which there must be agreement between a licence holder and worker. (Regulation 15 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003)

Paragraph 11 provides that before first providing services to a labour user, a licence holder must agree with the labour user the terms that will apply between them and for variation of those terms. (Regulation 17 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003)

Paragraph 12 prescribes the information that a licence holder must obtain from the labour user, before supplying a worker to that labour user, to enable them to select a suitable worker for the post the labour user wants to fill. (Regulation 18 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003)

Paragraph 13 provides that before the licence holder can supply a worker to a labour user, they must confirm: his/her identity, that they have the necessary experience, training or qualifications for the post, and that they are willing to work in that position. (Regulation 19 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003)

Paragraph 14 provides that before any work is commenced, the gangmaster must take all reasonable steps to ensure that the worker and labour user are aware of any legal or other requirements to be satisfied to enable that the worker to carry out the work in question. It also sets out the procedures to be adopted by the gangmaster where it obtains information indicating that the worker is unsuitable for the work for which they were supplied. (Regulation 20 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003)

Paragraph 15 specifies the information that a licence holder must provide to the worker and labour user when it offers a position to the worker and a particular worker to a labour user. (Regulation 21 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003)

Paragraph 16 sets out the procedures to be followed where more than one licence holder is involved.

Paragraph 17 makes provision where the worker is required to work and live away from home. (Regulation 24 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003)

Paragraph 18 makes provision concerning confidentiality. (Based on Regulation 28 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003)

Paragraph 19 specifies the particulars to be included in a licence holder's records relating to workers. (Schedule 4 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003)

Paragraph 20 specifies the particulars to be included in a licence holder's records relating to labour users. (Schedule 5 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003)

Paragraph 21 specifies the particulars to be included in a licence holder's records relating to dealing with other gangmasters. (Schedule 6 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003)

Paragraph 22 contains requirements about record keeping. (Regulation 29 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003)

Paragraph 23 provides that failure by a licence holder to comply with the Gangmasters (Licensing) Act 2004 and these Rules, so far as it causes damage, shall be actionable. (Regulation 30 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003)

Paragraph 24 provides that if any term of a contract is prohibited or made unenforceable by the Rules, the contract continues to operate and binds the parties to it if it is capable of continuing without that particular term. Where a labour user pays a transfer fee to a licence holder in respect of a term of contract that is unenforceable because of the provisions of Paragraph 6, the labour user is entitled to recover that money. (Regulation 31 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003)

8. Impact

8.1 A Regulatory Impact Assessment is attached to this memorandum.

9. Contact

9.1 David Nix at the Gangmasters Licensing Authority Tel: 0115 900 8964 or e-mail: david.nix@gla.gsi.gov.uk can answer any queries regarding the instrument.

GANGMASTERS (LICENSING CONDITIONS) RULES

FULL REGULATORY IMPACT ASSESSMENT

1. Title of Proposal

- 1.1. The Gangmasters (Licensing Conditions) Rules 2006 made under section 8 and 25(4) of the Gangmasters (Licensing) Act 2004.

2. Objective

- 2.1. To introduce licensing arrangements for Gangmasters operating in agriculture and related processing and packaging activities. The Partial RIA and Consultation document proposed for these measures to cover shellfish gathering. Feedback from the consultation indicated further work was needed before licensing could be introduced for the shellfish-gathering sector. In light of this, these Rules apply only for supplying workers to agricultural, horticultural work and food, fish and shellfish processing and packaging activities. Shellfish gathering will be excluded (through the Gangmasters (Exclusions) Regulations) until October 2006 when separate licensing arrangements will be brought forward.

3. Background

- 3.1. The Gangmasters (Licensing) Act 2004, hereafter referred to as “the Act”, introduces licensing for gangmasters (hereafter described as Labour Providers) operating in agriculture, shellfish gathering and related processing and packaging activities.
- 3.2. The Act established the Gangmasters Licensing Authority (GLA). The GLA is responsible for introducing and operating the new licensing arrangements.
- 3.3. There are a number of statutory instruments to be made under the 2004 Act. Defra is responsible for:
- The Gangmasters (Licensing Authority) Regulations 2005 (No. 448). The Regulations established the status and constitution of the GLA and appointed members.
 - The Gangmaster (Exclusions) Regulations. The Exclusions Regulations will exclude certain work from the scope of the Act and specify circumstances when a licence is not required.
 - The Gangmasters (Appeals) Regulations. The Appeals Regulations will provide an appeal mechanism for labour providers whose licence is rejected.
 - There will also be Regulations making provisions establishing the steps a Labour User may choose to take to verify a Labour Provider’s licence status. Undertaking these “reasonable steps” will offer the Labour User a defence against prosecution, once the offences are commenced, if it transpired the Labour Provider was unlicensed. Defra will be consulting on these proposals in due course.
- 3.4. The RIAs for the 2004 Act, 2005 Regulations, Exclusions and Appeals Regulations are available on the Defra website: www.defra.gov.uk/farm/gangmasters/index.htm

3.5. The scope of the Rules will have a direct effect for Labour Providers, Labour Users and the Gangmasters Licensing Authority.

3.6. This RIA assesses the options for establishing the practical arrangements for these various elements of a Licensing Scheme. The Rules are UK wide.

4. Rationale for Government Intervention

4.1. Without the Rules, the GLA would be unable to implement the Act's provisions for establishing the licensing arrangements and conditions. This would mean the policy objective of the Act would not be achieved. The rationale for the proposed licensing arrangements is explored in the options section.

5. Consultation

Within Government

5.1. Other Government Departments (OGDs) and Agencies consulted include Cabinet Office, DEFRA, DTI, DWP, Home Office, HM Revenue and Customs, HM Treasury, HSE, Office of Fair Trading and Small Business Service.

Public Consultation

5.2. The GLA published a consultation document on 17 October. The consultation closed on 12 December. Over 70 written responses were received and approximately 200 people attended 12 consultation events across the UK. A full summary of responses is available on the GLA website: www.gla.gov.uk

6. Sectors and Groups Affected

6.1. The principal business sectors affected are labour providers and labour users in the food, fish and fresh produce processing and packaging sectors. Based on research undertaken on behalf of Defra, it is estimated that some 7,500 labour users use a labour provider to supply workers to undertake primary production, initial and second stage processing activities. There are thought to be some 1,000 "visible" labour providers involved in meeting this demand for labour. This research is available on the Defra website: www.defra.gov.uk/farm/gangmaster/index.htm#research

6.2. A summary of the key statistics derived from this research is attached at **Annex A**. The overall number of labour providers is dependent on the Gangmasters (Exclusions) Regulations.

6.3. The GLA has estimated that of these 1000 Labour Providers: 27 have a turnover of over £10 million a year; 30 have a turnover between £5 - £10 million a year; 190 have a turnover between £1 - £5 million a year; and 753 with a turnover of under £1 million a year. It is important to note that this is turnover of business conducted in the licensable sectors.

6.4. A number of the respondents to the consultation and in particular in discussion at the consultation events considered the figure of 1000 labour providers to be an underestimate. Anecdotal evidence at the consultation events indicates this figure

could be significantly higher. The Association of Labour Providers considers that numbers who will seek to be licence will be significantly less than 1000, particularly in light of the experience of other regulatory bodies, such as the Security Industry Authority, which received less applications than initially forecasted. The Recruitment and Employment Confederation questioned the level of accuracy in the Act RIA, given the reduction in original estimate of 4,000 labour providers. The GLA notes these comments, but will continue to use 1000 for planning purposes, as this is based on the most recent research.

- 6.5. The main public sector impact will be through the GLA managing and administering the Licensing Scheme. Other Government Departments will also be affected through processing checks on licence applications.
- 6.6. It is believed at least two Labour Providers are registered charities. The anticipated impact from introducing the licensing arrangements will be same as for other Labour Providers.

7. Options

- 7.1. This RIA considers the options for establishing the necessary arrangements and conditions for a statutory based Licensing System. Options are discussed in this RIA for differing elements of the licensing scheme
- 7.2. The analysis in this RIA is based on a number of assumptions. The GLA will receive 1000 licence applications in its first year of operation. Not all applications will be successful. The Appeals Regulations RIA assumes 10 per cent of applications will be refused. On the basis of 1000 licence applications, 100 would be refused. The Appeals Regulations RIA also assumes 50% of those refused would appeal (50 applications). From these 50 appeals, it is assumed 10 per cent would be successful. Therefore, the number of licences to be issued in year 1 is estimated to be 905.
- 7.3. It is assumed there will be a steady state of approximately 905 licences a year. This includes withdrawals and new entrants. The Act RIA estimated 10 per cent of labour providers would withdraw from the scheme. This accounts for both voluntary withdrawals and GLA licence revocations. On the basis of 905 licences, there would be 91 withdrawals a year. It is assumed the same number of new entrants will replace these withdrawals. New entrants to the sector include new start-ups and transfers from the informal economy.

8. Method of Application

Rationale

- 8.1. To ensure confidence in the scheme, the application process should be easy to understand, simple to complete and efficient. With this in mind, labour providers will be able to apply electronically via an online application form. This option should help to speed up the process for making a decision on licence applications.
- 8.2. To avoid excluding those who may not have access to electronic channels an alternative combined phone and paper application process will be offered. Labour Providers will request this method of application by phone. The web-enabled version of the form will be completed as a talk through by a GLA operator, printed

out and sent to the Applicant for completion. The applicant will sign and return the form to the GLA.

- 8.3. It is assumed 75 per cent of applications will be made online and 25 per cent by phone. This is based on the online application being easier to complete and would enable a decision on a licence application to be made more promptly. This was assumption challenged in response to the consultation as being an overestimate. The Association of Labour Providers and Recruitment and Employment Confederation highlighted the experience of the Criminal Records Bureau, which they cited as receiving far fewer online applications than anticipated. The GLA does not consider comparison to the CRB's experience relevant to the proposed licensing scheme as the CRB do not accept online applications. The majority of written responses as well as feedback from the consultation events favoured the online application process. The GLA is confident that 75 per cent applying online is a reasonable assumption.
- 8.4. Labour Providers will also only have to complete an application once. The cost associated with applying is one-off. At renewal, licence holders just have to declare their turnover to set the fee level and confirm that details submitted in the application are still correct.
- 8.5. The details of the Principal Authority and Directors or Partners who manage or play a role in making management decisions about the actions of the business will need to be provided as part of the application process. These people will be individually named on the licence. Details will also need to be provided for those who are authorised by the principal authority to negotiate the supply of workers to a labour user. In response to the consultation, there was considerable concern expressed that naming each individual who fulfils this role would impose significant costs on larger labour providers through notifying the GLA of changes in names. It was commented that this section of the industry has a high turnover of staff. However, the Gangmasters (Licensing) Act 2004 stipulates that anyone acting as a gangmaster (as defined by the Act) needs to be named or otherwise specified. To reduce burdens on labour provider businesses larger labour providers (with over £5 million turnover a year) will be able to designate post or job titles to identify people authorised to act under a licence.
- 8.6. Smaller labour providers will be required to name all those acting as a gangmaster. However, for labour providers with less than £5 million turnover a year, it is likely they will only need to provide one or two names as part of the application process. For labour providers with over £5 million turnover a year, it is likely they will only need to name between 1 – 5 individual and designate the post titles appropriate to their organisation as part of the application.

Costs

- 8.7. Labour Providers will incur indirect costs through time spent familiarising guidance, gathering information and completing the application form. As the number of names to be individually identified in the application can be limited, the estimated time to complete is reduced from that in the consultation (which estimated between 1.5 – 4 hours). It is assumed it will take the same length of time to complete the application online or by phone.

- 8.8. It is estimated that for all Labour Providers, completing the application will take no longer than 2 hours. It is estimated that the average salary of the person performing this work is to be £14.69 per hour.¹ The ALP commented in response to the consultation that this average salary is a low estimate. However, the GLA considers this salary level is a reasonable estimate for whole industry. Labour Providers may also incur non-wage costs. To take account of this, the calculations for assessing the cost to business are multiplied by 30 per cent (or 1.3).² Therefore, for an individual Labour Provider, the cost would be no more than £38.20 (or **£38,200** in total).
- 8.9. It is assumed 10 per cent of Labour Providers withdraw from the sector each year and are replaced by new entrants. On the basis of 905 licences being issued in year, there would be 91 new applications in year 2 and 3. The costs for the second and third years for new applications are estimated to be: 91 applications x 2 hours x £14.69 per hour x 1.3 = **£3,476**.
- 8.10. The GLA will incur costs through processing online licence applications. The time required for the GLA staff for checking and assessing the application, initiating checks with OGDs and making a decision is estimated to take an average of 1 hour. This work will be undertaken at Administrative Officer level with an hourly rate of £14 (including associated overhead costs). These estimates do not include resources required for initiating and conducting possible inspections. The estimated costs for this are discussed later. The GLA will also incur non-staff costs, such as the IT system necessary to support the Licensing Scheme. These costs are discussed in the Licence Fee section.
- 8.11. For the scenario of 1000 applications, there would be 750 online applications. On this basis the GLA staff costs for year 1 are estimated to be: 750 applications x 1 hour x £14 per hour = **£10,500**
- 8.12. Assuming there are 10 per cent withdrawals and 10 per cent new entrants, on the basis of 905 licences being issued in year 1, there would be 91 new applications with 68 completed on line. Therefore, the estimated staff costs for the GLA in year 2 and 3 for processing new applications will be:
- Year 2: 68 applications x 1 hour x £14 per hour = **£952**
 - Year 3: 68 applications x 1 hour x £14 per hour = **£952**
- 8.13. The GLA will further incur costs through administering phone applications. The time required for the GLA staff for the initial processing of applications and making a decision is estimated to take an average of 2 hours. This accounts for the time required for talking through and completing the application by phone, processing the returned form and undertaking the activities identified for handling online applications. This work will be undertaken at Administrative Officer level with an hourly rate of £14 (including associated overhead costs).
- 8.14. Therefore, for processing 250 phone applications, the staff costs for year 1 are estimated to be: 250 applications x 2 hours x £14 per hour = **£7,000**

¹ Based on the average hourly salary for Managers and Proprietors in agriculture and services, 2004 Annual Survey of Hours and Earnings (ASHE), Office of National Statistics

² See www.cabinetoffice.gov.uk/regulation/ria/ria_guidance/costs_and_benefits/quantification.asp

- 8.15. Assuming there are 10 per cent withdrawals and 10 per cent new entrants, on the basis of 905 licences being issued, there would be 91 new applications with 23 completed by phone/paper. Therefore, the estimated staff costs for the GLA in year 2 and year 3 for processing new applications will be:
- Year 2: 23 applications x 2 hours x £14 per hour = **£644**
 - Year 3: 23 applications x 2 hours x £14 per hour = **£644**

Summary

- 8.16. The total estimated staff costs for this combined approach of accepting online and phone/paper applications for both Labour Providers and the GLA is:

Labour Providers	GLA
<i>For year 1:</i>	
Based on 1000 applications	Based on 1000 applications
£38,200	£17,500
<i>For year 2:</i>	
Based on 91 applications	Based on 91 applications
£3,476	£1,596
<i>For year 3:</i>	
Based on 91 applications	Based on 91 applications
£3,476	£1,596

9. Application Assessment and Inspections

Rationale

- 9.1. To ensure the application process is credible, all Labour Providers applying for a licence will be subject to an assessment by the GLA. There are two types of possible checks – checks against the records of OGDs and Application Inspections, which is an inspection undertaken by the GLA, or by an Inspector contracted by the GLA, of a Labour Providers business.

Options

- 9.2. There are three options for the use of application checks:

Option 1 – No Application Inspections, rely on checks with OGDs

- 9.3. Every Labour Provider applying for a GLA licence will be subject to checks with OGDs. The check would be conducted for the business and the controlling interest (the Principal Authority). Labour Providers engaged in illegal activity are highly likely to be non-compliant with legislation enforced by OGDs. Inspection activity will be undertaken as part of follow up compliance action by the GLA after a licence is granted.
- 9.4. The checks will seek information on: Criminal prosecutions conducted; Criminal sanctions other than prosecution (e.g. cautions and warnings); Civil proceedings (e.g. for debt recovery of unpaid tax); Civil penalties (used in place of criminal sanctions); Information of current non-compliances that have not been resolved, but which may not have required criminal or civil sanctions, at that point.

Benefits

- 9.5. This option is the lowest cost option as Inspections will be only in relation to compliance activity. Labour Providers would not face any disruption to their day-to-day business from having an Application Inspection conducted. The GLA would not incur costs through administering Application Inspections.

Disadvantages and Costs

- 9.6. Although authoritative and reasonably current and complete, OGD checks will inevitably be less than perfect. This, coupled with the limited knowledge of the industry, means that licences could be issued to businesses that have neither been inspected nor risk-assessed.
- 9.7. There are no costs for business. However, the OGDs will incur staff costs through checking applications. The GLA will routinely instigate checks with: Department for Work and Pensions; Her Majesty's Revenue and Customs; Home Office; Health and Safety Executive and Department of Trade and Industry.
- 9.8. The time required by OGDs to check applications is estimated to take an average no longer than 2 hours per Department or work area. It is likely Executive Officers will carry out this work at an average of £18 per hour. This hourly rate includes associated overhead costs. For 1000 applications in year 1 and 91 applications in years 2 and 3, the total staff costs for OGDs are estimated to be:

	Year 1		Year 2		Year 3	
	2 Hours x 1000 applications	Multiplied by £18	2 Hours x 91 applications	Multiplied by £18	2 Hours x 91 applications	Multiplied by £18
DWP	2000	£36,000	182	£3,276	182	£3,276
DTI	2000	£36,000	182	£3,276	182	£3,276
HMRC - Revenue	2000	£36,000	182	£3,276	182	£3,276
HMRC - Customs	2000	£36,000	182	£3,276	182	£3,276
HO	2000	£36,000	182	£3,276	182	£3,276
HSE	2000	£36,000	182	£3,276	182	£3,276
Total		£216,000		£19,656		£19,656

Option 2 – OGDs Checks and Application Inspections for all

- 9.9. Every Labour Provider applying for a GLA licence will be subject to checks with Other Government Departments. In addition, every Labour Provider will also be subject to an Application Inspection before being issued a licence.
- 9.10. The Temporary Labour Working Group (TLWG) currently offers audits for Labour Providers against its Code of Practice. The GLA recognizes a successful audit demonstrates evidence of meeting the required standard to be issued with a licence. Therefore, Labour Providers who already had a successful TLWG audit, determined by the GLA, will not normally require an additional GLA Application Inspection. This may also apply to other approved industry auditing. However, an Application Inspection may be required depending on the completeness of the

original audit against the TLWG Code and the nature and degree of any unresolved non-compliances from the original audit.

- 9.11. For the purposes of the analysis in this RIA, for our best case estimate there will be approximately 500 successful TLWG audits or other approved industry auditing schemes completed during year 1 (revised from the Partial RIA which estimated 560 – this change is based on the latest data from the TLWG). On the basis of 1000 applications, the GLA will need to undertake 500 application inspections in year 1 (either by the GLA itself or GLA approved Inspectors). It is assumed the TLWG audit process will not continue once the GLA is fully operational. Therefore, for this option the GLA will need to undertake Application Inspections for 91 new applications in years 2 and 3.

Benefits

- 9.12. This option treats all businesses equally. It offers an element of certainty in that every business knows that it will be subject to a GLA Inspection.

Disadvantages and Costs

- 9.13. It treats the compliant low risk business in the same way as the high-risk non-compliant business.
- 9.14. There will be cost implications for Labour Providers and Labour Users through allowing time for an Application Inspection as well as on the GLA for managing inspections. As recommended in paragraph 10.10, labour providers will also be charged the cost of an inspection. Therefore, those that do not require a GLA inspection pay less.
- 9.15. The GLA would incur costs through administering the Inspections. The time required for the GLA to conduct Application Inspection will depend on the size of the Labour Provider. However, it is assumed an Application Inspection will take an average of 1.5 days. This time also takes into account the time required for the GLA to travel and write the report. The actual time spent in the business will be much less than this.
- 9.16. An Application Inspection will involve a face-to-face meeting with both the management of the Labour Provider business, as well as interviews with Workers supplied by the Labour Provider. The Labour Provider will face some disruption to their normal day-to-day business from having the GLA conducting an Inspection. Labour Providers may also incur some costs through time spent preparing for an Application Inspection. It is estimated Labour Providers will spend on an average 2 hours preparing for an Application Inspection.
- 9.17. It is estimated that the average salary of the Labour Provider employee who would spend time preparing for an Application Inspection is £14.69 per hour. Labour Providers may also incur non-wage labour costs. To take account of this, the calculations for assessing the cost to business are multiplied by 30 per cent (or 1.3). Therefore, the cost for preparing for an Application Inspection for an individual Labour Provider is estimated to be £38.19.

- 9.18. For 500 Application Inspections in year 1, the total cost for Labour Providers for this preparatory work is estimated to be: 500 application inspections x 2 hours preparation time x £14.69 per hour x 1.3 = **£19,097**
- 9.19. For 91 Application Inspections in years 2 and 3, the total cost to Labour Providers for this preparatory work is estimated to be:
- For year 2: 91 application inspections x 2 hours preparation time x £14.69 per hour x 1.3 = **£3,476**
 - For year 3: 91 application inspections x 2 hours preparation time x £14.69 per hour x 1.3 = **£3,476**
- 9.20. Labour Providers and Labour Users will incur some disruption to their normal business and associated loss of productivity. Feedback from Labour Providers indicates that the time spent conducting the Inspection would not adversely affect business.
- 9.21. The GLA will incur staff costs through arranging and scheduling an Application Inspection. It is estimated the time required for this will be no longer than 30 minutes (or 0.5 hours). This work will be undertaken at Administrative Officer level with an hourly rate of £14 (including associated overhead costs). On the basis of 1000 licence applications, the GLA staff cost for arranging and scheduling 500 application inspections in year 1 will be: 500 application inspections x 0.5 hours x £14 per hour = **£3,500**
- 9.22. For 91 Application Inspections in years 2 and 3, the GLA staff cost for arranging and scheduling application inspections is estimated to be:
- For year 2: 91 application inspections x 0.5 hours x £14 per hour = **£637**
 - For year 3: 91 application inspections x 0.5 hours x £14 per hour = **£637**
- 9.23. The Partial RIA estimated that the cost associated for the GLA to conduct an Application Inspection will be approximately £1,125 for a 1.5 day-long Inspection (or £750 per day). This includes all costs – staff, travel, and any other additional costs. The Partial RIA estimated that 440 labour providers would not have a TLWG and therefore would require inspecting, giving a total cost to the GLA of £495,000.
- 9.24. Following the consultation exercise, the costs associated with conducting application inspections have been reviewed. The forecast at Annex B sets out costs budgeted for in Year 1. The total cost is now £850,000. £177,500 is budgeted for interpreters, £400,000 is budgeted for external contractors and the remaining £272,500 pay costs for the GLA Inspectors in the Licensing and Compliance Team. As discussed at paragraph 10.10, the GLA has proposed that these costs are recovered through charging for application inspections. Paragraph details that the £850,000 will be charged from a scale according the size of the business.
- 9.25. The difference in cost from the estimate in the Partial RIA is due to:
- A previous underestimation of the resources required for interpreter provision.
 - Budgeting to contract out application inspections to GLA approved auditors. In contracting out, the GLA needs to take account of the market rate for auditing.

The rationale for contracting out is to reduce the fixed costs (through increased staff numbers) to the GLA after Year 1, although there is an increased amount for Year 1 only.

- A reduced number of TLWG audited labour providers (reduced from 560 to 500). This increases the number to be inspected by the GLA.

- 9.26. There would be 91 Application Inspections in Years 2 and 3. Based on the estimated average unit cost (£1,700) for an Application Inspection in Year 1, the cost incurred by the GLA is estimated to be 91 application inspections x £1,700 = **£154,700**. Due to the reduced number of new applications in years 2 and 3, the GLA has budgeted to conduct Application Inspections in house and there would be no charge for Application Inspections. This is discussed further in the section on the Licence Fee.
- 9.27. The GLA and OGDs would also incur the same costs as option 1 for conducting OGD checks.

Option 3 – OGD Checks and Application Inspection according to risk

- 9.28. OGD checks will again be completed on every application. The costs associated with these OGD checks are the same as option 1. The GLA will take a risk-based approach to determining whether an Application Inspection is required. Some applicants will have had a successful TLWG audit or other approved industry-auditing scheme, obviating the need for a GLA Inspection. Others may not need to have an Inspection, based on the risk profiles the GLA will develop from data collected.
- 9.29. An initial risk assessment will be based on the application form responses, with high-risk cases being scheduled for an Application Inspection visit and OGD. All applications will be subject to OGD checks. A small number of random inspections will also be conducted to ensure veracity of the data.
- 9.30. The GLA is developing a risk profile that determines the threshold for triggering an Application Inspection. Until the risk profile is complete and used against actual licence applications, it is not possible to quantify the number of Application Inspections conducted on a risk-based approach. For illustrative purposes, the unit costs for one inspection are presented.

Benefits

- 9.31. This option checks every applicant business against Government records to establish whether the business is, or has been, in breach of legal requirements. A risk assessment of each applicant will determine whether or not a full Application Inspection is required allowing resource to be directed at those businesses that are deemed to be at high risk.

Disadvantages and Costs

- 9.32. The option relies heavily on effective risk assessment and may be challenged by certain stakeholders as not being a comprehensive system. Failure to properly risk-assess Labour Providers could result in licences being inappropriately issued. The fact that the system is differentiated may generate reaction from businesses that

believe that they are being unfairly targeted for Inspection. And, as this sector is being licensed for the first time, there is a danger of insufficient knowledge of the sector to apply and accurately assess risk and set a risk threshold to trigger an Application Inspection.

- 9.33. The unit costs for Labour Providers, Labour Users and the GLA are the same as for option 2. However, the total costs will depend on the number of Application Inspections conducted.
- 9.34. As for option 2, the cost to Labour Providers and Labour Users through disruption to their normal business and associated loss of productivity whilst an application inspection is conducted is very difficult to quantify.
- 9.35. As for option 2, Labour Providers may also incur some costs through time spent preparing for an Application Inspection. It is estimated Labour Providers will spend an average no longer than 2 hours preparing for an Application Inspection. It is estimated that the average salary of the Labour Provider who would spend time preparing for an application inspection is £14.69 per hour.³ Labour Providers may also incur non-wage labour costs. To take account of this, the calculations for assessing the cost to business are multiplied by 30 per cent (or 1.3). Therefore, the cost for preparing for an Application Inspection for an individual Labour Provider is estimated to £38.19.
- 9.36. The GLA will incur staff costs through arranging and scheduling an Application Inspection. It is estimated the time required for this will be no longer than 30 minutes (or 0.5 hours). This work will be undertaken at Administrative Officer level with an hourly rate of £14 (including associated overhead costs). For one application inspection, the GLA staff cost for arranging and scheduling will be £7.
- 9.37. Based on the average unit cost for an application inspection, set out in option 2 (£850,000 divided by 500), the cost to the GLA conducting an application inspection would be £1,700. As set out in paragraph 10.10, the cost of the application inspection would be charged to the labour provider.
- 9.38. The GLA and OGDs would also incur the same costs as option 1 for conducting OGD checks.

Recommendation and Conclusion

- 9.39. The risk-based principle of option 3 is the preferred approach. This option is seen as delivering effective worker protection with targeted inspection of high-risk businesses. This will be a lower cost to both industry and the GLA than a blanket inspection approach and gives the Authority significant flexibility to implement and manage.
- 9.40. A risk-based approach to licensing strikes a better and fairer balance between protecting worker rights and not imposing unnecessary costs on law-abiding businesses.

³ Based on the average hourly salary for Managers and Proprietors in agriculture and services, *2004 Annual Survey of Hours and Earnings (ASHE)*, Office of National Statistics

- 9.41. Option 1 represents the ultimate light touch approach. If there was greater knowledge of the operating practices in the sector and there was clear evidence that nearly all Labour Providing businesses would be compliant this could be a way forward. However, in light of the limited knowledge of the practices in the sector, this option is deemed to be inappropriate.
- 9.42. This proposed inspection approach depends on effective risk assessment of Labour Providing businesses. However, the available information in order to calculate a risk profile is limited. In light of this GLA considers it necessary to conduct application inspections for all applicants without a successful TLWG audit. This would allow data to be collected to provide a statistically reliable risk profile. That profile will be brought into use at the earliest possible time, as agreed by the GLA Board.
- 9.43. Until the risk profile is fully developed and tested against licence applications, it is very difficult to anticipate with any degree of certainty the number of high risk applications. Therefore, the GLA will ensure it has sufficient resource to take account of this uncertainty. On the basis of 1000 applications, the GLA will have contingency to handle around 500 Application Inspections.

10. Licensing Application and Renewal Fee

- 10.1. The GLA consultation on the licensing scheme recommended a banded fee level based on labour provider's turnover in the regulated sector and ranged from £660 to £32,500. Businesses that achieved a successful TLWG audit at the time of application would qualify for a discount of £250 against the first year's licence fee. This discount would be available for the first two months after the commencement of licensing (up until 31 May 2006).
- 10.2. In response to the consultation, most respondents favoured a banded approach linked to turnover. However, it was widely considered that the fee levels generally are much too high and could drive businesses out of the sector. The fee structure could also remove the incentive for Labour Providers to seek a TLWG audit.
- 10.3. The GLA is charged under Treasury Guidelines with recovering all of its operating costs through licence fees and income and thereby breaking even financially. In light of the consultation responses, the GLA and Defra (as the GLA's sponsor department) has undertaken a review of the cost structure with a view to reducing the financial burden on the licence fee payers.
- 10.4. The consultation responses, particularly the feedback from the consultation events, indicated that the Act RIA had raised expectations of the possible fee levels to be levied. However, in developing the licensing scheme and as a result of the number of likely licence applications being reduced from 4,000 to 1,000 it has proved extremely difficult to satisfy such expectations and inevitably the likely fee regime is substantially higher than the one set out in the Act RIA.
- 10.5. The GLA now proposes to recategorise its costs into three basic elements: Operating Costs, One-off set up costs and costs attributable to enforcement. The GLA would only seek to recover through the licence fee income the costs designated as operating costs and that set up costs and enforcement costs would be covered by Defra. This approach will have a substantial impact on the fee level that

the GLA needs to recover from labour providers. Annex B shows the revised budgets for 2006/07 and 2007/08 with the associated allocation to the three cost elements (this accounts for the resources identified elsewhere in the RIA as well as additional costs incurred by the GLA).

- 10.6. The table at Annex C, entitled Three Year Financial Forecast, represents the GLA expenditure budgets for 2006/07 and 2007/08. Again this accounts for the resources identified elsewhere in this RIA. This forecast has been prepared following the close of the consultation exercise and presents a much more accurate picture of the GLA's likely expenditure for the three year period. It should be emphasized that the budgets are for revenue spend only and therefore do not include any elements of capital acquisition. In summary the budgets show the following expenditure profile:

	Pay Costs (£)	Non Pay Costs (£)	Total Costs (£)
2006/07	1,261,577	1,467,136	2,728,713
2007/08	1,279,999	718,106	1,998,105

- 10.7. Another issue emanating from the public consultation was the lack of incentive offered to labour providers who may undertake a TLWG audit prior to becoming licensed.
- 10.8. Under the current arrangements the incentive of a £250 discount from the license fee (which will be discontinued on 31 May 2006) does not appear substantial enough to attract labour providers into the TLWG regime. Therefore, it could potentially persuade labour providers not to go down the TLWG audit route and delay their application for licensing as late as possible with the consequence that they would receive a GLA Application Inspection at nil cost. This will have a two-fold detrimental impact on the GLA. Firstly, it will put pressure on GLA inspection resources and secondly it could prejudice an even flow of applications to be processed if labour providers leave applications for licences to the last possible date.
- 10.9. Therefore, the GLA proposes (in line with the recommendations from the ALP and others) charging an additional fee to any labour provider who has an Application Inspection up to the date that the Board agrees that Application Inspections are made on a risk-assessed basis. Therefore only those labour providers who have successful TLWG audits at the time of applying for licences will be exempt from a chargeable GLA Application Inspection.
- 10.10. The price of Application Inspections will be determined by the costs incurred by the GLA. It is proposed that a scale of charges for Application Inspections be introduced for Application Inspections in Year 1. The scale corresponds to the licence fee scale described in paragraph 10.18 and therefore bears a significant relationship to the likely costs incurred by the GLA in undertaking the Application Inspections. Once the Risk Rating is used to determine applications for licensing that the GLA will cease to charge for Application Inspections. The charges are:

Turnover	Charge
£10m+	£2,500
£5 – 10m	£2,100

£1 – 5m	£1,850
Less than £1m	£1,600

10.11. This policy will have two positive effects for the GLA:

- It is anticipated that labour providers will re-assess whether a TLWG audit is the best approach (and thereby reduce the GLA's inspection burden).
- It will generate around £850,000 for the GLA in 2006/07 (based on 500 Application Inspections) that will be used to discount the fee levels for all labour providers. If there are fewer Application Inspections (due to the introduction of the risk based system), this approach allows the GLA to just recover the costs associated with the numbers of inspections conducted.

10.12. This recategorisation of costs and introduction for charging for Application Inspections provides for the GLA to propose an alternative option outlined below.

Options

Options in the Consultation Document:

Option 1 – No Fee

10.13. The GLA is expected to recover its costs. Therefore, this is not a viable option.

Option 2 – Full cost recovery with a flat fee

10.14. £2,130 per licence in year 1. It is proposed the fee level would remain the same for year 2. This is compared against the budgeted expenditure of approximately £2.07m. Given that the figure to be recovered may vary according to the number of licences issued in year 1, the fee for year 2 would be reviewed during the first year of operation.

Benefits

10.15. A flat fee would allow for a consistent approach for all Labour Providers.

Costs

10.16. However, it does not account for the Labour Provider's actual ability to pay. Discussions with industry and the GLA Board suggests a fee level of £2,130 could be seen as unreasonable and would almost certainly be unbearable for at least the smallest and start-up Labour Providers. This fee level would be regarded as a barrier to entry and would be a disincentive to apply for a licence and to operate legally within the sector.

Option 3 - Full cost recovery with a banded fee

10.17. This was the recommended option in the consultation document. This option proposes full cost recovery with a banded fee with a £660 entry level and levels geared to the size of the Labour Provider.

Costs

10.18. Labour Providers can be categorised into four different bands according to the size of their annual turnover:

Turnover	Number of Labour Providers	Fee Level
£10m+	27	£32,500
£5 – 10m	30	£15,200
£1 – 5m	190	£1,600
Less than £1m	753	£660

10.19. For year 2, a banded fee structure is proposed to remain the same (again, this might vary depending on the actual number of licences issued in year 1). Given the figure to be recovered may vary according to the number of licences issued in year 1, the fee for year 2 would be reviewed during the first year of operation.

Benefits

10.20. The banded approach keeps fees lower for smaller Labour Providers. Larger Labour Providers would incur a higher fee. However, a banded approach is much more related to a Labour Provider's ability to pay.

New Option Post-Consultation:

Option 4 – Revised Fee Level

10.21. Based on the responses from the public consultation the GLA has striven to reduce the financial burden on labour providers by mitigating the proposed licence fee levels. As discussed above, this has been achieved by:

- Recategorisation of costs – a recognition that some GLA costs refer to either enforcement, set up or non-recurring one-off costs.
- Introduction of charging for Application Inspection visits carried out by the GLA. This will have the effect of reducing the fee levels in 2006/07. It is important to note there will be no reduction in 2007/08, as it is not intended to charge for Application Inspections after the first year. It is anticipated that a risk based approach to Inspection will be operating at this time.

Costs

10.22. Annex B illustrates the approach to recategorisation. As a result of this approach the income that needs to be generated to cover GLA operating cost is as follows:

Year	Cost to be recovered
2006/07	£1,323,746
2007/08	£966,687

10.23. Based on the further assumption that Application Inspections are charged for in 2006/07 it is budgeted that additional revenue, for that year only, of £850,000 is generated. This assumes that 500 applicants for applicants for licenses have not

had successful TLWG audits and that on average the GLA charge around £1,700 per Application Inspection.

10.24. Therefore the expenditure to be recovered is as follows:

Year	Cost to be recovered
2006/07 (£1,323,746 - £850,000)	£473,746
2007/08	£966,687

10.25. The following table illustrates the proposed fee structure for the two years in question (using the same banding arrangements as option 3).

2006/07			
Turnover in Licensed Sectors	Number of Labour Providers	Fee level	Income Generated
£10m+	27	£4,000	£108,000
£5 – 10m	30	£2,000	£60,000
£1 – 5m	190	£750	£142,500
Less than £1m	753	£250	£188,250
			£498,750
2007/08			
£10m+	27	£9,000	£243,000
£5 – 10m	30	£4,500	£135,000
£1 – 5m	190	£1,750	£332,500
Less than £1m	753	£500	£376,500
			£1,087,000

10.26. It is anticipated that the fee level for 2007/08 will also pertain for 2008/09 with caveat that merger with the Health and Safety Executive may impact GLA budgets by that time.

10.27. Applicants refused a licence and reapply will be required to pay the fee for the licence again but not the charge for an Application Inspection.

Recommendation

10.28. The GLA supports option 4 as it reduces the overall cost to be recovered. The concept of charging for Application Inspections for those without a TLWG audit also recognises the effects of businesses who have opted for a TLWG audit. The total cost in year 1 to industry from this option would be the £498,750 accrued from the fee plus the £850,000 for charges an Application Inspection. TLWG audited businesses will benefit from the £250 discount if they apply before 31 May (the GLA has set aside £141,000 to cover this discount). Therefore, the total cost borne by industry is **£1,223,750** in year 1. In year 2 it would be **£1,087,000**.

11. Licensing Standards – the conditions applied to a licence

11.1. The GLA has identified a range of potential conditions that Licence Holders will have to comply with. The complete set of conditions that a Labour Provider will be expected to comply with is set out in the Licensing Standards. The Licensing

Standards includes the Licensing Conditions in the Gangmasters (Licensing Conditions) Rules. In addition to the Rules, the GLA has identified obligations imposed by other legislation relevant to the Licensing Scheme. The Licensing Standards will provide guidelines for industry by explaining all that they need to comply with. They seek to secure the proper conduct of Labour Providers, thereby protecting the interests of Workers. Annex E sets out the Licensing Standards. This version of the Licensing Standards takes account of the responses from the consultation. Annex D includes a table highlighting the changes made post consultation. The estimated costs associated with complying with the Licensing Standards are estimated below.

- 11.2. It is likely Labour Providers will incur a one-off cost to adapt business procedures to ensure compliance with the Licensing Standards. It is assumed that preparing for these changes will require the attention of a member of staff for a small Labour Provider for a full working week (5 days or 40 hours) or the equivalent of a medium and larger sized Labour Provider. It is possible that medium and larger sized Labour Providers will require less time as they would benefit from economies of scale that result from having a central monitoring system across several establishments of one firm (this spreads fixed costs over more than one establishment). However, it is assumed that medium and large sized Labour Providers would use an equivalent amount of labour hours as a small provider. It is estimated the average salary of the person undertaking this work is £14.69 per hour.⁴ Labour Providers will also incur non-wage labour costs. To take account of this, the calculations for assessing the cost to business are multiplied by 30 per cent (or 1.3). These non-wage costs cover possible redesigns of IT systems.
- 11.3. Based on 1000 Labour Providers applying for a licence in the first year, the one-off staff cost for preparing systems and processes for dealing with the Licence Conditions is estimated to be: 1000 applicants x £14.69 per hour x 40 hours x 1.3 = **£763,880**.
- 11.4. Assuming 91 new applicants to the industry in years 2 and 3, this one-off staff cost each year would be: 91 applicants x £14.69 per hour x 40 hours x 1.3 = **£69,513**
- 11.5. The systems and processes Labour Users may need to adopt to account for the licensing arrangements will not be known until the Reasonable Steps Regulations are finalised. The Reasonable Steps RIA will consider this potential impact.
- 11.6. The majority of the conditions set out in the Licensing Standards are obligations required by other legislation that relate to or affect the conduct of the Labour Provider. As Labour Providers are currently required to comply with the legislative requirements, no new burden will be created on business.
- 11.7. In addition to these requirements, there are also additional conditions in the Licensing Standards that the GLA has identified as being necessary. These are set out in the Gangmasters (Licensing Conditions) Rules. The costs associated with these Rules are detailed below.
- 11.8. Labour Providers will be required to produce all records (in whatever format held) required by Compliance or Enforcement officers. This condition will facilitate

⁴ Based on the average hourly salary for Managers and Proprietors in agriculture and services, 2004 Annual Survey of Hours and Earnings (ASHE), Office of National Statistics

compliance activity. If it is refused the GLA will then have evidence of a breach of conditions and will be able to take compliance action. The costs associated with this are expected to be minimal.

- 11.9. The consultation document included a proposal that all Labour Providers must have a written contract with the Labour User for every arrangement to supply labour. It is estimated two thirds of Labour Users do not have regular written contracts with Labour Providers (approximately 4,900), but they prefer to work on an adhoc verbal agreement basis. Contracts tend to be in place with Labour Users that require a continuous supply of Workers throughout the year. The TLWG Code of Practice considers it is good practice to have a written contract or written service level agreement between Labour Providers and Labour Users.
- 11.10. It is assumed the medium to large sized Labour Providers already use written contracts with labour users and therefore would not incur any additional new cost through the introduction of this condition. It is assumed this applies to the Labour Providers with a turnover of over £1 million per year (that is approximately 25 per cent of Labour Providers).
- 11.11. The 75 per cent of Labour Providers (say 750 Labour Providers for illustrative purposes) with a turnover of less than £1 million a year, may incur a cost from complying with this condition. Further discussions will be held with industry to quantify the anticipated cost for this condition.
- 11.12. The responses to the consultation indicated that many agreed in principle with written contracts being in place, but the consensus was this would be in practical to achieve. Therefore, this proposal will not be included.
- 11.13. The Act disapplied the Employment Agencies Act 1973 and associated regulations for the activities for which a licence will be required. In order to ensure workers have maximum protection, the consultation document selected the most relevant provisions from this legislation to be included in the Rules, for example Regulation 10 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (Conduct Regulations) which concerns payment of transfer fees was omitted. However, in response to the consultation the Recruitment Employers Confederation urged there be consistency for labour providers covered by the Employment Agencies Act who supply workers in the licensable sectors and non-licensable sectors, and that all provisions from this legislation (excluding those concerning the entertainment) are included in the Rules. The GLA accepts this view and has included all the provisions in the Rules. This will also ensure there is a level playing field for the sector.
- 11.14. For labour provider already covered by the Employment Agencies Act and Conduct Regulations, including these provisions will not impose any additional costs. However, for labour providers not already covered by this legislation, new costs will be incurred. The Conduct Regulations seek to restrict or prohibit certain activities as well as requiring certain actions are undertaken.
- 11.15. Some labour providers may incur a loss of revenue from being prevented from undertaking these activities that will be prohibited. It is very difficult to quantify this cost. The consultation exercise was unable to identify these possible costs.

- 11.16. The Conduct Regulations now included in the licensing scheme that impose a requirement that certain actions are undertaken will impose costs. It is considered that the majority of these provision are either already undertaken by labour providers (and therefore would not impose new costs) or would only have negligible costs. The identified costs are estimated as:
- 11.17. Before supplying a Worker to a Labour User, a Licence Holder must agree the terms that will apply between the Licence Holder and the Worker including the type of work the Licence Holder will find or seek to find for the Worker and the content of the terms with the Worker.
- 11.18. A Licence Holder must also record all terms in writing, where possible in one document, and give the Worker the written terms before he provides any services to the Worker. This may only be varied by written agreement, a copy of which must be provided to the Worker as soon as possible and in any event no later than the end of the fifth working day following the day the variation was agreed. A Licence Holder may not make the continued provision of any services by him to a Worker conditional on the agreement by the Worker to any variation.
- 11.19. Labour Providers will incur costs through recording this information in writing with the worker. There would also be further costs through notifying these changes in writing. Labour Providers supply up to 450,000 Workers during the course of a year in the agricultural, shellfish gathering and associated food and fish processing and packaging sectors. In an average month Labour Providers may supply around 148,000 people. However, the total number of arrangements Labour Providers agree with workers in a year is difficult to estimate. For illustrative purposes, it is assumed on average Labour Providers agree terms with workers once a year with amendments made on one further occasion in the year. It is also assumed the average length Labour Providers take to agree these arrangements is no longer than 10 minutes with a further 5 minutes for dealing with the amendments. Therefore, Labour Providers are estimated to spend 15 minutes (0.25 hours) a year per Worker in agreeing and amending terms. It is estimated the average salary of the person undertaking this work is £14.69 per hour.⁵ Labour Providers will also incur non-wage labour costs. To take account of this, the calculations for assessing the cost to a business are multiplied by 30 per cent (or 1.3). Therefore, the estimated recurring annual cost for agreeing and amending terms with one worker is estimated to be £4.77.
- 11.20. On the basis of 450,000 Workers the total recurring annual cost would be £2,146,500. However, an initial discussion with business indicates that a number of Labour Providers already undertake this work and therefore would not incur any additional new cost through the introduction of this condition. It is assumed this applies to the Labour Providers with a turnover of over £1 million per year (that is approximately 25 per cent of Labour Providers). It is assumed these Labour Providers supply the majority of workers (approximately 75 per cent or 337,500). Therefore, it is estimated the 75 per cent Labour Providers (say 750 Labour Providers for illustrative purposes) with a turnover of less than £1 million a year supply 112,500 workers a year to the licensable sectors. Again if the average annual cost agreeing terms and conditions with a Worker is £4.77, the total

⁵ Based on the average hourly salary for Managers and Proprietors in agriculture and services, *2004 Annual Survey of Hours and Earnings (ASHE)*, Office of National Statistics

recurring new cost to Labour Providers for dealing with 112,500 Workers is estimated to be **£536,625**.

- 11.21. Labour providers will also incur costs through agreeing in writing arrangements with labour users. It is assumed those with a turnover over £1 million a year already undertake this work. Therefore, for those with under a £1 million a year turnover (753 labour providers), this requirement will be a new burden. It is estimated that agreeing in writing the arrangements with a labour user will approximately 30 minutes, with the estimated average salary of the person undertaking this work being £14.69 per hour. Therefore, the unit cost is £7.35. It is believed that Labour Providers have between 2 – 3 arrangements with labour users a year. Therefore, the total cost a year is: 753 labour providers x 2.5 arrangements a year x £7.35 pay cost per arrangement = **£13,836**
- 11.22. It is estimated that the additional Conduct Regulations being replicated will only impose minimal or negligible costs.
- 11.23. These proposals should lead to better service being offered to Labour Users. Labour Providers should also benefit from increased confidence in the industry. As identified in this RIA, Labour Providers will face some extra costs, but if work-seekers and employers have greater confidence in standards in the industry, they could make greater use of its services.
- 11.24. These benefits are not easily quantifiable. Labour Providers supply up to 450,000 workers during the course of a year in the agricultural, shellfish gathering and associated food and fish processing and packaging sectors. In an average month Labour Providers may supply around 148,000 people.⁶ A high proportion of these work-seekers stand to gain from the clarification of Standards Labour Providers need to adhere to. However, it is not possible to say how many will benefit from these changes.

12. Notifying the GLA

- 12.1. Labour Providers will be required to notify the GLA of the following:
- Any change in name or business address.
 - Any changes in the control or running of business.
 - Any changes in details on the application form (including those named on the licence).
 - If there is suspicion the licence has been misused.
- 12.2. The GLA will use this information to make a decision as to whether the change is so fundamental that a new application is required and the existing licence should be revoked. A new application will be required if the businesses VAT, Companies House and / or PAYE number changes.
- 12.3. The consultation document proposed varying lengths of time for notifying the GLA of these changes. To make sure there is no confusion, it has been decided to standardize the length of time labour providers will have to notify the GLA of these changes. Licence holders will have 20 working days to notify the GLA.

⁶ Precision Prospecting, *Temporary Workers in UK Agriculture and Horticulture: A Study of Employment Practices in the Agricultural and Horticulture Industry and Co-Located Packhouse and Primary Food Processing Sectors*, 2005

Costs

- 12.4. Labour Providers will incur costs through notifying the GLA. Labour Providers will have the choice of notifying the GLA (either online, by phone or in writing). The costs associated for Labour Providers contacting the GLA will depend on the number of changes that require updating.
- 12.5. It is assumed the time required for the Labour Provider to notify the GLA of a change will be an average of 10 minutes (or 0.17 hours). It is estimated the average hourly salary of the person undertaking this work is £14.69. To take account of non-staff costs 30 per cent uplift needs to be factored in. On this basis, the cost to Labour Providers for making one notification is estimated to be £3.25.
- 12.6. The total number of notifications is not known. However, for illustrative purposes it is possible to identify a range of total costs to Labour Providers:
- For a total of 500 notifications a year:
 - 500 changes x 0.17 hours x £14.69 x 1.3 = **£1,623**
 - For a total of 1000 notifications a year:
1000 changes x 0.17 hours x £14.69 x 1.3 = **£3,246**
 - For a total of 2000 notifications a year:
2000 changes x 0.17 hours x £14.69 x 1.3 = **£4,995**
 - For a total of 5000 notifications a year:
5000 changes x 0.17 hours x £14.69 x 1.3 = **£16,232**
- 12.7. The GLA would incur costs through handling these changes in details. The resource required by the GLA will depend on the method of communication used by the Labour Provider to notify the GLA. It is assumed that 75 per cent of notifications will be online. This is in line with the assumption for the number of applications made on online. The remaining 25 per cent will be either by telephone or in writing. It is anticipated the GLA would incur negligible staff costs for handling online notifications, as the automated nature of the system would remove the need for manual interface.
- 12.8. However, the GLA would incur costs through processing the telephone or paper notifications. It is assumed processing these will take no longer than 10 minutes (0.17 hours). The average salary of the person performing this work is estimated to be £14 per hour. Again, this includes associated overhead costs. On the basis of the range of costs to Labour Providers identified above, the recurring cost to the GLA for handling the 25 per cent that are made by telephone or in writing is estimated to be:
- For handling 125 telephone/paper notifications (25 per cent of 500 total notifications): 125 changes x 0.17 hours x £14 per hour = £298
 - For handling 250 telephone/paper notifications (25 per cent of 1000 total notifications): 250 changes x 0.17 hours x £14 per hour = £595
 - For handling 500 telephone/paper notifications (25 per cent of 2000 total notifications): 500 changes x 0.17 hours x £14 per hour = £1,190
 - For handling 1,250 telephone/paper notifications (25 per cent of 5000 total notifications): 1,250 changes x 0.17 hours x £14 per hour = £2,975

12.9. Resources may also be required to conduct OGD checks, if the need to do so was identified. The GLA will conduct OGD checks on the name changes routinely only for the Principal Authority. It is estimated the time required for processing these change of circumstances and preparing cases for referral for OGD checks will be an average of 0.5 hours. Administrative Officers will carry out this work at an average £14 per hour. This hourly rate includes associated overhead costs. It is not known how many of these notifications there will be each year. For illustrative purposes, for 100 such notifications of the Principal Authority, the total staff cost each year for GLA to prepare cases for checking with OGDs is estimated to be:
 100 notifications x 0.5 hours x £14 per hour= **£700**

12.10. OGDs will also incur costs through processing the checks. Executive Officers will carry out this work at an average of £18 per hour. This hourly rate includes associated overhead costs. The time required is estimated to take an average 2 hours per Department or work area. On the basis of 100 checks each year for these notifications, the total staff costs each year for OGDs is estimated to be:

	2 Hours x 100 checks	Multiplied by £18
DWP	200	£3,600
DTI	200	£3,600
HMRC - Revenue	200	£3,600
HMRC - Customs	200	£3,600
HO	200	£3,600
HSE	200	£3,600
Total		£21,600

12.11. If someone did not notify the GLA, and it subsequently identified such changes, it may decide that the risk rating for Compliance Inspection may be increased.

13. Compliance

13.1. The GLA's compliance activities will be conducted on a risk basis. The GLA will have the power to conduct Compliance Inspection visits. The level of risk attributed to a licence case will determine decisions on when a Compliance Inspection may be required. This will be based on information obtained in the application process (through the application form, application inspections, OGD checks and intelligence obtained). This could be supplemented through any further information and intelligence obtained by the GLA.

13.2. There will be no specific check on continuing compliance at renewal. The tasking of Compliance Inspections will be according to the level of risk associated with the Labour Provider. The highest risk Labour Providers will be identified and Inspections scheduled. It is therefore unnecessary to link compliance activity to renewal process.

13.3. Until the Licensing Scheme is in operation and the GLA is able to gather information on Labour Providers, it is very difficult to estimate how many Compliance Inspections the GLA will conduct. However, the GLA anticipate conducting Compliance Inspections with the ten Labour Providers deemed to be the highest risk each month. This would mean there would be 120 Compliance Inspection visits a year. In addition, a number of Compliance Inspections would be

conducted at random. It is estimated there will be 80 such visits a year. Therefore, it is anticipated that the GLA would undertake 200 Compliance Inspections a year.

- 13.4. The process involved in a Compliance Inspection will be similar to an Application Inspection. As for Application Inspections, the length of a compliance visit will depend on the size of the business. It is assumed an Inspection will be an average 1.5 days. This time also takes into account the time required for the GLA to travel and write the report.
- 13.5. The cost to Labour Providers and Labour Users through disruption to their normal business and associated loss of productivity whilst a Compliance Inspection is conducted is not known.
- 13.6. The cost associated for the GLA to conduct a Compliance Inspection is similar to that associated with an Application Inspection of an average £1,700 per inspection. This includes all costs – staff, travel, training for inspectors and any other additional costs.
- 13.7. On this basis, the ongoing annual cost of the Compliance Inspections for the GLA will be: 200 compliance inspections x £1,700 = **£340,000**
- 13.8. However, due to the number of Labour Providers having Application Inspections in year 1, there is unlikely to be a need to conduct many Compliance Inspections. Therefore, the GLA will not seek to directly recover costs associated with Compliance Inspections in year 1. However, as a contingency, resources could be diverted from Applications Inspection for necessary compliance action.

14. Small Firms Impact Test

- 14.1. It is estimated that around 95% of the Labour Provider businesses to be licensed would be defined as a Small to Medium Sized Enterprise (SME) for the purposes of this RIA. A SME is one with fewer than 250 employees or has less than £5 million turnover a year.
- 14.2. Responses to the consultation exercise indicated small firms were most concerned about the licence fee levels. Labour Providers recognised the benefit of the banded approach with fee levels related to ability to pay. However, it was felt the fee level for the larger sized companies was too large. The Labour Providers asked for alternatives to be considered for recovering the GLA costs so that the impact on business could be minimised.
- 14.3. The revised fee structure reduces the cost borne by industry. However, it is recognised that the charge for application inspections for those without a successful TLWG audit in year 1 could raise the entry level for small firms. The Small Business Service have expressed concern that this could represent a barrier to entry for some smaller firms and may deter some businesses from seeking licences.

15. Competition Assessment

- 15.1. It is believed that no Labour Provider has more than a 10 per cent share of the market. No one firm has a dominant share of the market. Over 75 per cent of Labour Providers have a turnover of less than £1 million.
- 15.2. The major cost to Labour Providers from the introduction of the Licensing Scheme is the licence fee. Small Labour Providers will have the greatest concern over their ability to pay the licence. However, the 'adopting a banded fee' approach will ensure the amount the Labour Provider pays reflects the size of their business. The introduction of a charge for Application Inspections for those without a successful TLWG audit may have some impact on competition in the sector, as the entry-level cost for those without a TLWG audit will be increased. However, this charge is only one-off cost in Year 1. Therefore, it is not believed that this will have a significant effect. The costs of new paperwork and administration for smaller Labour Providers could affect smaller firms to a greater extent than larger firms. The larger providers could more easily absorb the changes with minimal disruption to their current business practices. However, such negative effects on smaller Labour Providers' competitiveness are unlikely to be significant.
- 15.3. It is possible the market could consolidate as a consequence of these changes, with larger Providers potentially taking over smaller Providers or smaller Providers will merge.
- 15.4. The licensing arrangements should not lead to higher set up costs for new or potential firms compared with the costs for existing firms. The licence fee is the same for existing and new Labour Providers. However, it is possible that introducing licensing arrangements may inhibit the entry of new firms into the market. New Labour Providers may decide to supply labour to sectors not covered by the licensing arrangements. The Licence System would not lead to higher ongoing costs for new compared with costs for existing firms.
- 15.5. Furthermore, the market is not characterised by rapid technological change. It is not believed that the changes will restrict the ability of Labour Users to choose price, range or location of Workers to be supplied by Labour Providers.
- 15.6. Some firms may be affected more than others and the changes may lead to some change in the market structure. This may have some impact on competition in the market. However, it is not believed that this will have a significant effect.

16. Social and Environmental Impact

- 16.1. The proposals for implementation of licensing are not expected to have any social or environmental costs or benefits.

17. Race Equality Impact Assessment

- 17.1. The GLA has a duty under the Race Relations Act 1976 (as amended by the Race Relations Amendment) Act 2000 to promote race equality. As part of this function the GLA will consider the impact of any policy on those affected directly or indirectly and work to develop good race relations. As a first step, the GLA has screened its policy and has concluded that it is race neutral. The GLA is confident that there should not be a disproportionate impact on any sector covered by these

proposals. The GLA will monitor the impact of the licensing scheme after it has been in operation for a year.

- 17.2. The licensing scheme will benefit directly workers in the agriculture, shellfish gathering and related processing and packaging activities. The Mission Statement of the GLA is clear that it will aim “To safeguard the welfare and interests of workers whilst ensuring labour providers operate within the law”. Exploitation of workers has been characteristic of this type of work for some time. The GLA will identify and tackle abuse of workers through inspection and compliance activity. Recent research suggests that the majority of workers are now non-UK citizens. There has been a significant move away from locally based labour to migrant labour coming from other parts of the EU/ accession states. The GLA will actively be looking at how best to share information with workers and Labour Providers who do not speak English.

18. Enforcement and sanctions

- 18.1. The Act establishes four criminal offences. The primary offence involves operating as a Labour Provider without a licence. It will also be an offence to be in possession of a false licence or other documents purporting to show that an unlicensed Labour Provider is licensed. It will be an offence for a person to enter into an arrangement with an unlicensed Labour Provider for the supply of labour. The fourth offence will be obstructing an Enforcement or Compliance Officer. Defra has delegated the enforcement function to the GLA.
- 18.2. The maximum penalties for the principal offences of operating without a licence is a sentence of ten years imprisonment and a fine of up to £5,000 and for using an unlicensed Labour Provider is a sentence of one year imprisonment and a fine of up to £5,000. The Department for Constitutional Affairs was consulted about the nature and scale of the offences when the Act was drafted.
- 18.3. The GLA aims to bring illegal operators into the formal economy by demonstrating that there are greater disincentives to operating illegally (e.g. prosecution) than being licensed. Enforcement action will be intelligence-led, acting on prioritised intelligence assessments. Such action is undertaken to the standards for criminal investigation, and to statutory Codes of Practice on Investigation. The GLA will use appropriate powers of investigation, available to enforcement bodies under criminal justice legislation, and those additionally provided in the Act, that are proportionate to the offence(s) under investigation.
- 18.4. The offence for operating without a licence in for agricultural and horticultural work and food, fish and shellfish processing and packaging will be introduced on 1 October 2006. The offence of using an unlicensed labour provider will be introduced on 1 December 2006.

19. Implementation and Delivery Plan

- 19.1. These Rules are subject to negative resolution procedures. It is anticipated that the Rules, 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 at the beginning of April 2006. Labour providers will not be able to apply for a licence until the Rules are in force.

20. Monitoring and Review

20.1. As stated in the Act RIA, the operation of the Licensing Scheme will be reviewed every 5 years. The review will take the form of an independent external audit.

21. Summary

21.1. The table below summarises the total estimated identified policy and administration costs associated with the proposals for the licensing scheme. This summarises the total costs for the predicted number of 1000 licence applications in year 1. Total Estimated Identified Policy And Administration Costs – Licensing Scheme

Policy Costs	
Licence Fee (includes charges for Application Inspections and discount for successful TLWG audited applicants)	
Year 1	£1,223,750
Year 2	£1,087,000
Year 3	To be determined
Administration Costs	
Method of Application	
Year 1	£32,200
Year 2	£3,476
Year 3	£3,476
Application Inspections	
Year 1 (based on 500 inspections)	£19,097
Year 2	£3,476
Year 3	£3,476
Licensing Standards	
Year 1	£763,880
Year 2	£69,500
Year 3	£69,500
Notifying the GLA of change in circumstances (average 2000 a year)	
Year 1	£5,000
Year 2	£5,000
Year 3	£5,000
Agreeing terms with Workers and Labour Users	
Year 1	£553,836
Year 2	£553,836
Year 3	£553,836
Total Costs	
Year 1	£2,597,563
Year 2	£1,22,288
Year 3	£635,288 (Admin Costs only)

22. Contact

22.1. For further information, please contact: David Nix, Gangmasters Licensing Authority, PO Box 8538, Nottingham, NG8 9AF, Email: david.nix@gla.gsi.gov.uk, Telephone: 0115 900 8964

23. Declaration

23.1. I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs. Signed by:

A handwritten signature in black ink, appearing to read 'Paul Whitehouse', is written over a light grey rectangular background.

Paul Whitehouse
Chairman, Gangmasters Licensing Authority
Date 8/03/2006

Annex A

ESTIMATED NUMBER OF LABOUR PROVIDERS / LABOUR USERS AFFECTED BY LICENSING

Total Number of Businesses engaged in:

(1)	Primary production / agriculture	300,000
(2)	Food processing / manufacture	3,500

Labour Users who use casual / temporary labour

(3)	Total Number	22,393
	<i>Of which:</i>	
(4)	Undertake second stage processing	790
(5)	Undertake initial processing / primary production	21,603

Labour Users who use a Labour Provider

(6)	Total Number	7,522
	<i>Of which:</i>	
(7)	Undertake second stage processing	570
(8)	Undertake initial processing / primary production	6,952

“Visible Labour Providers”

(9)	Total Number	1,000
	<i>Of which:</i>	
(10)	Supply second stage processing only	20
(11)	Supply second stage processing, initial processing and primary production	220
(12)	Supply initial processing / primary production only	760

** All labour providers identified could also supply other sectors of the economy*

Annex B

**GANGMASTERS LICENSING AUTHORITY
FORECAST 2006-2007 AS AT 29 DECEMBER 2005**

	<u>Total Costs</u>	<u>Operating Costs</u>	<u>One Off Set Up Costs</u>	<u>Enforcement Costs</u>
Pay Costs				
All Dept's Inc Chairman				
Chairman	19,000	9,500	0	9,500
Chief Executives Office	129,984	38,995	25,997	64,992
Policy & Secretariat	171,288	34,258	85,644	51,386
Licensing & Compliance	593,016	237,206	118,603	237,206
Finance & Corporate Services	290,556	203,389	29,056	58,111
Administration	0	0	0	0
Consultancy	20,000	0	20,000	0
Performance related pay	37,733	22,640	3,773	11,320
Total Pay Costs	1,261,577	545,988	283,073	432,516
Non Pay Costs				
Travel & subsistence	72,000	28,800	7,200	36,000
Accommodation	69,036	34,518	0	34,518
Office machinery	10,000	5,000	0	5,000
Telephone	20,000	8,000	2,000	10,000
Stationery/postage	25,000	10,000	2,500	12,500
Board expenses	15,000	15,000	0	0
Internal audit	10,500	7,350	0	3,150
External audit	20,000	14,000	0	6,000
Recruitment costs	30,000	0	30,000	0
Vehicle hire	30,000	15,000	0	15,000
Relocation expenses	10,000	0	10,000	0
System design consultancy	0	0	0	0
Training	30,000	9,000	9,000	12,000
Software licenses	7,500	0	7,500	0
IT Support costs	57,600	23,040	11,520	23,040
Marketing	75,000	0	75,000	0
Discounts	141,000	0	141,000	0
Miscellaneous	37,000	14,800	7,400	14,800
TLWG Transition	30,000	0	30,000	0
Application Inspection Costs	400,000	400,000	0	0
Interpreters	177,500	53,250	71,000	53,250
Legal Costs (Appeals)	200,000	140,000	60,000	0
Total non pay costs	1,467,136	777,758	464,120	225,258
TOTAL EXPENDITURE	2,728,713	1,323,746	747,193	657,774

**GANGMASTERS LICENSING AUTHORITY
FORECAST 2007-2008 AS AT 29 DECEMBER 2005**

	<u>Total Costs</u>	<u>Operating Costs</u>	<u>One Off Set Up Costs</u>	<u>Enforcement Costs</u>
Pay Costs				
All Dept's Inc Chairman				
Chairman	19,588	9,794	0	9,794
Chief Executives Office	134,005	26,801	40,202	67,003
Policy & Secretariat	176,586	35,317	88,293	52,976
Licensing & Compliance	611,357	244,543	122,271	244,543
Finance & Corporate Services	299,563	209,694	29,956	59,913
Administration	0	0	0	0
Consultancy	0	0	0	0
Performance related pay	38,900	23,340	3,890	11,670
Total Pay Costs	1,279,999	549,489	284,612	445,898
Non Pay Costs				
Travel & subsistence	74,227	29,691	7,423	37,114
Accommodation	71,172	35,586	0	35,586
Office machinery	5,000	2,500	0	2,500
Telephone	20,619	8,248	2,062	10,310
Stationery/postage	25,774	10,310	2,577	12,887
Board expenses	15,465	15,465	0	0
Internal audit	10,825	7,578	0	3,248
External audit	20,619	14,433	0	6,186
Recruitment costs	10,000	0	10,000	0
Vehicle hire	30,928	15,464	0	15,464
Relocation expenses	0	0	0	0
System design consultancy	0	0	0	0
Training	30,000	15,000	0	15,000
Software licenses	7,732	3,866	0	3,866
IT Support costs	57,600	28,800	0	28,800
Marketing	50,000	15,000	20,000	15,000
Discounts	0	0	0	0
Miscellaneous	38,145	15,258	7,629	15,258
TLWG Transition	0	0	0	0
Application Inspection Costs	0	0	0	0
Interpreters	100,000	50,000	0	50,000
Legal Costs (Appeals)	150,000	150,000	0	0
Total non pay costs	718,106	417,198	49,691	251,217
TOTAL EXPENDITURE	1,998,105	966,687	334,303	697,115

Annex C

GANGMASTERS LICENSING AUTHORITY

THREE YEAR FINANCIAL FORECAST 2005-2008 AS AT 29 DECEMBER 2005

	2005/6	2006/7	2007/8	Total
Pay Costs				
All Dept's Inc Chairman	742,454			742,454
Chairman		19,000	19,588	38,588
Chief Executives Office		129,984	134,005	263,989
Policy & Secretariat		171,288	176,586	347,874
Licensing & Compliance		593,016	611,357	1,204,373
Finance & Corporate Services		290,556	299,563	590,119
Administration	13,688	0	0	13,688
Consultancy	28,900	20,000	0	48,900
Performance related pay	25,678	37,733	38,900	102,311
Total Pay Costs	810,720	1,261,577	1,279,999	3,352,296
Non Pay Costs				
Travel & subsistence	44,786	72,000	74,227	191,013
Accommodation	65,785	69,036	71,172	205,993
Office machinery	3,504	10,000	5,000	18,504
Telephone	22,960	20,000	20,619	63,579
Stationery/postage	16,078	25,000	25,774	66,852
Board expenses	14,948	15,000	15,465	45,413
Internal audit	10,000	10,500	10,825	31,325
External audit	18,000	20,000	20,619	58,619
Recruitment costs	26,150	30,000	10,000	66,150
Vehicle hire	512	30,000	30,928	61,440
Relocation expenses	6,828	10,000	0	16,828
System design consultancy	66,732	0	0	66,732
Training	16,076	30,000	30,000	76,076
Software licenses	52,170	7,500	7,732	67,402
IT Support costs	0	57,600	57,600	115,200
Marketing	105,488	75,000	50,000	230,488
Discounts	0	141,000	0	141,000
Miscellaneous	13,189	37,000	38,145	88,334
TLWG Transition	132,900	30,000	0	162,900
Application Inspection Costs	0	400,000	0	400,000
Interpreters	0	177,500	100,000	277,500
Legal Costs (Appeals)	0	200,000	150,000	350,000
Total non pay costs	616,106	1,467,136	718,106	2,801,348
TOTAL EXPENDITURE	1,426,826	2,728,713	1,998,105	6,153,644

Annex D

GLA Licensing Standards Comparative Table

This table compares changes made to the Licensing Standards pre and post consultation

LS No	Consultation	Post Consultation	Comment
1.1	C	C	
1.2	Co	Co	
1.3	X	Co	Refers to Licence URN production
2.1.1	M	M	
2.1.2	M	M	
2.1.3	R	R	
2.1.4	R	X	Section 2.1 Condensed and simplified
2.1.5	R	X	Section 2.1 Condensed and simplified
2.2.1	Co	Co	
2.2.2	M	M	New version for Scotland
2.2.3	M	M	
2.3	M	C	Mentions NMW C
2.4	M	M	
2.5	M	M	
3.1.1	C	C	
3.1.2	C	X	Amalgamated and reworded into 3.1.1
3.2.1	M	C	Bonded labour increased to C
3.2.2	M	M	
3.2.3	M	M	Amalgamated into 3.2.1; new transfer fee
3.2.4	X	R	Worker giving notice
3.3.1	M	C	Increased to Critical
3.3.2	M	X	3.3.1 + 2 amalgamated
3.4	M	C	Upgraded to C: keeping passports)
3.5.1	Co	Co	Reduced to one item on complaints and harassment. Eq Ops policy removed
3.5.2	Co	X	
3.5.3	Co	X	
3.5.4	Co	X	
3.6.1	R	R	
3.6.2	Co	Co	Wording revised
3.6.3	R	X	Removed
4.1	M	M	Amended wording
4.2	M	M	
4.3	M	C	Upgraded to Critical. 4.3 and 4.4 amalgamated
4.4	M	X	
5.1	M	M	Reworded
5.2	M	M	
5.3	X	M	New transferred from 9.1.2
6.1.1	M	M	Comment expanded to include recruitment agencies' vans
6.1.2	Co	M	Reworded Health and Safety
6.1.3	Co	Co	Amalgamated 6.1.2. Reworded.

6.2.1	M	R	6.2.1+2 amalgamated
6.2.2	M	X	Becomes 6.2
6.2.3	Co	X	Revision of marking
6.3.1	C	M	Reworded “LP allowing workers to work in conditions...”
6.3.2	R	M	Redrafted 6.3: 4 paras to 2, major; Reworded.
6.3.3	R	X	
6.3.4	R	X	
6.3.5	Co	X	Section condensed and reworded
6.4.1	C	M	Reduced. Correct critical in 6.4.2; mention of drivers’ hours
6.4.2	M	C	Upgraded to Critical: state of vehicles used to transport workers
6.4.3	R	R	Reworded
6.4.4	R	R	Foreign references deleted
6.4.5	R	M	Reworded re no of seats
7.1.1	C	R	Critical reviewed
7.1.2	R	Co	7.1.1+2 Combined; original 7.1 to Comment section; 7.1.2 bullet added
7.1.3	Co	X	
7.2.1	M	M	7.2.1 Reworded
7.2.2	Co	M	
7.2.3	Co	Co	Reworded
7.2.4	Co	X	
8.1	M	C	Subcontractors
8.2	M	M	Reworded
8.3	Co	Co	
8.4	C	Co	Section 8 condensed. Critical removed
8.5	Co	X	
9.1.1	M	M	9.1 section reduced to 3
9.1.2	Co	X	
9.1.3	M	X	9.1.1 considered duplicate
9.1.4	Co	X	Removed
9.1.5	Co	X	Section condensed
9.2.1	M	M	Redrafted
9.2.2	Co	R	
9.2.3	C	M	Reduced
9.2.4	R	X	Deleted
9.2.5	R	X	Included in 9.2.1
10.1.1	M	M	Reworded
10.1.2	R	R	Reworded
10.2.1	X	M	Expanded
10.2.2	X	R	New– striking workers
TOTAL	73	56	

Abbreviations: C=Critical; M = Major; R=Reportable; Co=Correctable; [X=discontinued]
The symbols indicate the category of non-compliance and what is expected to demonstrate compliance.

Annex E

GLA LICENSING STANDARDS

Part One

How the Licensing Standards are Applied

Introduction

1. The Gangmasters (Licensing) Act 2004 aims to curb the exploitation of labour within agriculture, horticulture, fish processing, gathering shellfish, dairy farming industries or packaging or processing of these products. The Act led to the formation of the Gangmasters Licensing Authority (GLA) in April 2005. The GLA exists to ensure the Act is followed and that conditions are fair for legitimate businesses and workers across the sector.
2. The GLA has established the Licensing Standards that will be used to assess whether a Labour Provider has passed or failed against the Licence Standards. Labour Providers will have to meet the GLA standards to qualify for a licence.
3. This guide sets out the GLA's Licensing Standards for use by Labour Providers. It:
 - explains the GLA licensing regime and
 - identifies the specific areas where the GLA expects a Labour Provider to demonstrate they are compliant.
4. The GLA Licensing Standards are no more than current legal requirements, such as VAT Registration, Health and Safety, etc. – things that all Labour Providers will already be well aware of. Other parts of the Standards, dealing with issues such as debt bondage, may be less familiar. In overall terms the GLA Standards is a reasonable range of measures that are probably already largely in place in any well-run business.
5. Application of the Licensing Conditions will be aimed at identifying the more persistent and systematic exploitation of workers rather than concentrating on the isolated occurrence of non-compliance. The Authority recognises that many Labour Providers are legitimate, hard working businesses. Those businesses should not find it difficult or burdensome to comply with the GLA Licensing Standards.
6. The GLA will revise the Licensing Standards from time to time in the light of any changes in law that might affect them and in the light of operational experience.
7. It will become an offence to provide labour into most agricultural, horticultural areas without a licence from October 2006. To allow time to meet this date, the GLA will invite applications for licences from Labour Providers from April 2006.

Offences

8. The offences created by the Act (section 12) will prohibit anyone from:
 - Operating as a gangmaster without a licence
 - Using an unlicensed gangmaster
9. The maximum penalty for operating without a licence on conviction is up to 10 years imprisonment and / or a fine. For a Labour User knowingly to employ an unlicensed Labour Provider, it is on conviction up to 51 weeks imprisonment and / or a fine (6 months in Scotland and Northern Ireland).
10. A gangmaster would also commit an offence if they held:
 - a relevant document that is known or believed to be false
 - a relevant document obtained by deception and known or believed to have been so obtained
 - a relevant document that relates to someone else with the intention of causing a third party to believe that the person in possession of the documentation or another person is a licensed gangmaster
11. There is also the offence of obstruction of a GLA Officer (section 18 of the Act) in the course of their duties.
12. The GLA will also be working closely with a range of Government Departments and Agencies to ensure that all legal requirements are met and enforced in this sector.

Methods of Obtaining Compliance Information

13. As a Regulatory Authority, the GLA is able to collaborate closely with other Government Departments and exchange information through legal gateways.
14. It has its own Intelligence team and systems and will have its own inspection teams and enforcement officers.
15. Evidence of compliance will be assessed from a variety of sources, but particularly by:
 - Face to face interviews with workers
 - Data collected from the Labour Provider
 - Interviews with the Labour Provider
 - Evidence collected by the GLA's own officers
 - Data provided from other Government sources
 - Data collected from the Application Process
 - Other intelligence sources
16. The information collected will assist the GLA to determine whether a licence will be granted, refused, suspended or revoked.

Inspection Visits

17. There are two types of inspection visit:
 - ***Application Inspection:*** for new applicants. The GLA aims to use a risk assessment to determine which businesses will be required to undergo an Application Inspection. If a Labour Provider fails to cooperate with GLA officers, it may result in unnecessary delay or refusal to grant a licence.
 - ***Compliance Inspection:*** for GLA Licence holders. The Authority will use risk-based techniques coupled with a random element, to call for a Compliance Inspection. If a Labour Provider fails to cooperate with GLA officers, it may be considered as obstruction, which is a criminal offence.
18. Either type of Inspection will be made by a Compliance Officer of the GLA, but occasionally the GLA may sub-contract it to an accredited external agent.
19. During an inspection, the Labour Provider will be asked to give details of any current contracts. The GLA will then choose to interview a proportionate sample of workers under those contracts and the inspection will proceed based on workers' responses and any other relevant factors that come to light.
20. Also, the Labour Provider will be asked to provide proof of compliance with the Licensing Standards by producing documentary proof, such as records, terms of employment, wages books etc.
21. The Labour Provider will be told whether the inspection has been considered successful or what, if any, measures need to be put right in case of non-compliance. In some cases, additional licensing conditions may be imposed, requiring improvement within set timescales, dependant on the severity of the identified non-compliance(s), in order to ensure future, continuing compliance.

Non-Compliance with the Licensing Standards

General

22. For the purposes of Application and Compliance Inspections, four categories of non-compliance will be used:
 - Critical
 - Major
 - Reportable
 - Correctable
23. Where appropriate, all but correctable non-compliances may be notified to the relevant agency.

Licence Standards Scoring

24. For the purposes of assessing non-compliance, according to the categories above, a scoring system will be introduced to determine whether a Labour Provider has passed or failed an inspection. This result will inform decisions on whether to refuse a licence, or revoke an existing licence. The scores for each category of non-compliance are set out below.
- Fail Score: 30
 - Critical: 30
 - Major: 8
 - Reportable: 4
 - Correctable: 2
25. Although the GLA may not initially include scores for lower levels of non-compliance (i.e. reportable and correctable) in decisions whether an inspection has been failed, the scores for those non-compliances will be counted towards a Risk Rating Score for Licensed Labour Providers. This score assists the GLA in identifying when, and which, Labour Providers may require a Compliance Inspection.
26. To assist in a proportionate approach to the continuous improvement and increase in compliance of the industry the GLA will determine whether to exclude, or include in future years, lower levels of non-compliance (i.e. Reportable and Correctable) in decisions on whether an inspection has been failed.

New Licence Applicants

27. A licence will be refused to any first time applicant who fails to meet satisfactorily the Licensing Standards. A report will be issued outlining the reasons for the refusal and what steps ought to be taken for a successful application.
28. Where the applicant has no non-compliances or the identified non-compliances are insufficient for a licence to be refused, a licence will be issued, subject to additional conditions which will seek to correct any shortcomings for the future. A time-limit will be set for the non-compliances to be corrected.

Existing Licence Holders

29. For someone already holding a licence, the inspection process is the same as for new applicants. For a licence holder whose non-compliances are found to be critical, or which in total exceed the permitted score, the licence can be revoked, immediately or in writing from a given date. For licence holders with less severe non-compliances a notice of Additional Licence Conditions, with time for improvement, may be issued. The issue of Additional Licence Conditions will increase the likelihood of a further compliance inspection.

New Businesses

30. Clearly it is more difficult for a new business to show compliance with the Licensing Standards in full. A new business will be expected to show systems in place which demonstrate the ability to conform to each section.
31. New businesses will not be dealt with disadvantageously, but the GLA reserves the right to inspect at an early date subsequently to see that it is compliant as an established business.

Employment Agencies and Employment Businesses

32. Agencies and Employment Businesses that come within the scope of the Act, whether supplying temporary or permanent labour, will be tested against the Licensing Standards.
33. However, given that many may supply labour also to other sectors not covered by the Act, and may have been inspected under DTI rules, the extent to which the Inspection needs to be targeted by the GLA will be decided on a case-by-case basis.

Effects of Refusal or Revocation of a Licence

34. If a licence is refused on first application, the applicant cannot trade as a Labour Provider (once the criminal offences have been introduced in Autumn 2006);
35. If the licence is revoked, the licence holder will be informed whether trading may continue for a certain period (usually until the outcome of any appeal is determined) or whether they should cease trading immediately.

Right of Appeal

36. There is a right of appeal where a licence is refused or revoked.

Areas Covered by the GLA Licensing Standards

37. The following areas are covered by the GLA Licensing Standards:
 1. Possession of a Valid GLA Issued Licence to Operate as a Gangmaster
 2. Payment of Wages, Tax, National Insurance, VAT: Improper Deductions and Allied Matters
 3. Debt Bondage, Harsh Treatment or Intimidation of Workers
 4. Workers' Accommodation
 5. Hours Worked, Working Time Regulations, etc
 6. Breaches in Health and Safety, including Training
 7. Recruitment and Contractual Arrangements
 8. Sub-contracting
 9. Identity Issues and Under-Age Working

10. Legality and Rights of Workers

Appendix 1: Record Keeping

38. There is a brief introductory note for each category.

Reporting Non-Compliances to Other Relevant Bodies

39. Where non-compliances of sufficient severity are discovered during the course of an inspection, and, in the opinion of the GLA, are not being properly addressed, the GLA will bring it to the attention of the appropriate government department or agency.
40. This particularly applies to evidence of:
- Any lack of proper business systems in place to demonstrate the payment of National Insurance, Tax and VAT
 - Individuals who do not have the right to work in the UK
 - Fraud or criminal activity of any kind
 - Mistreatment or exploitation of workers in any way
 - Any dangerous practices
 - Breaches of Health and Safety issues
41. Information will be passed to the Department's business support section (ie the section that assists and advises businesses on how to improve their compliance and understanding of Regulations)

Part Two

GLA Licensing Standards

This section sets out the detail of the GLA Licensing Standards. The symbols indicate the categories of non-compliance and what is expected to demonstrate compliance.

It is expected that Labour Providers will comply with Licensing Standards. Additional Licensing Conditions may be imposed by the GLA to correct or assure continued compliance, where non-compliance is evident.

Nonetheless, application of the Licensing Conditions will be aimed at identifying the more persistent and systematic exploitation of workers rather than concentrating on the isolated occurrence of non-compliance.

Categories of Non-Compliance

C:	Critical:	Most serious category of non-compliance
M:	Major:	Major non-compliances, but less than critical
R:	Reportable:	Significant non-compliances which may be reported to other Government Departments or Agencies
Co:	Correctable:	Less severe non-compliances than the above

Note: Data from Inspections will be used along with other sources available, especially from Other Government Departments (OGD), to assess compliance with the GLA Licensing Standards.

Licensing Standard 1: Possession of a Valid GLA Issued Licence to Operate as a Gangmaster

Guidance: The Labour Provider must be licensed by the Gangmasters Licensing Authority to act as a gangmaster (Labour Provider) providing labour in the industries covered by the legislation – agriculture, horticulture, fish processing, gathering shellfish, dairy farming or packaging or processing of these products. The Act (section 4) defines the term “gangmaster” in more detail.

Further, they must notify changes affecting the licence details. Changes of personal details (including convictions), change of address, names on the licence, directors etc. must be reported to the GLA within 20 working days.

Persons acting as a “Gangmaster” within the meaning of the Act must also be a “fit and proper person”. The GLA defines “Fit and proper” as:

.. any individual or organisation operating as a Labour Provider in the licensable sectors covered by the Act, which meets the requirements of the GLA. To be classed as “fit and proper”, the individual or organisation must comply with the licensing conditions in the Rules and any obligations imposed by other legislation which relate to or affect the conduct of the licence holder. The conditions to be complied with are set in the Licensing Standards, which accompanies the licensing scheme.

The Principal Authority responsible for their members of staff must not have been the subject of relevant convictions for offences connected to Labour Provider activities covered by the Licensing Standards, particularly where those offences relate to victimisation, harassment and violence towards workers. These offences may be a bar to receiving a licence. The GLA may also consider other information where this is brought to the attention of the GLA, and independent investigation by the GLA identifies activities that result in the individual or organisation being considered unfit to hold a licence.

An inspection will seek to assure that:

- LS 1.1 **C** A current GLA Licence to operate as a gangmaster under the GLA 2004 in issue (*NB: This applies to post licence decision holders and their sub-contractors only, not new applicants*) and the licence holder is or remains 'fit and proper' to hold it.
- LS 1.2 **Co** Licence Details are up to date with all relevant changes of circumstances notified within proper time scales.
- LS 1.3 **Co** The licence holder must provide to the Labour User:
- his URN (Unique Reference Number) and
 - on request, other licence details (including additional licence conditions imposed, if any) to workers and the Labour User

Licensing Standard 2: Payment of Wages, Tax, National Insurance, VAT: Improper Deductions and Allied Matters

Guidance: There must be proper schemes to collect National Insurance (NI), Income Tax and VAT and proper records to show that the Labour Provider has accounted to the relevant statutory authorities for all NI and Income Tax deductions, all Employers' NI contributions and all VAT charged. Documents must be properly maintained and retained. There must not be any deductions made other than statutory deductions from a worker's pay without their express, written permission. The Labour Provider must provide proper, complete and accurate wage slips.

The Labour Provider must pay at least the minimum wage for the job and pay any benefits to which the employee is entitled.

An inspection will seek to assure that:

Proper Systems are in Place for the Collection of Tax/NI/VAT

- LS 2.1 **M** There is evidence that the Labour Provider is registered as an employer with HM Revenue and Customs and has a PAYE number.
- LS 2.2 **M** Deductions from workers' pay of Income Tax and National Insurance are accurate, appropriate and paid to HMRC.
- LS 2.3 **R** If the business exceeds the VAT threshold, there is documentary evidence that it is registered with HMRC and charges and pays VAT.

Improper Deductions / Withholding of Wages

- LS 2.4 **Co** There is evidence that the Labour Provider has an accurate payroll system in place whether in a paper or electronic form.
- LS 2.5 **M** Where deductions from wages, other than those legally required, are made (e.g. for transport), there is evidence on file of workers' written consent to those deductions.
- LS 2.6 **M** [**Scotland - agricultural workers only**⁷: No deductions from wages are made, other than those legally allowed, and any other payments being made by workers outwith the wages system to the Labour Provider are supported by evidence on file of workers' written consent.]
- LS 2.7 **M** The Labour Provider has not withheld or threatened to withhold payment to any worker on the following grounds:
- Non-receipt of payment from the Labour User
 - The worker failing to prove that he has worked during a particular period of time (although the licence holder can satisfy themselves that the worker did carry out the work using other means)
 - The worker only having worked during the period to which the payment relates
 - Any matter within the control of the Labour Provider

Minimum Wage in Payment

- LS 2.8 **C** The worker is paid at least the national or agricultural minimum wage, taking into account the rules on accommodation charges.

Benefits Paid (eg Sick Pay, Paid Annual Leave Entitlement)

- LS 2.9 **M** There is evidence that all workers receive paid annual leave entitlement, and any of the other benefits they are entitled to. Records of any paid annual leave entitlement, statutory sick pay, statutory paternity pay, statutory maternity pay and statutory adoption pay are kept on workers' files.

Wage Slips Provided

- LS 2.10 **M** There is evidence that workers have been provided with itemised accurate payslips for each pay period showing at least their Income Tax, National Insurance payments and other authorised deductions.

Licensing Standard 3: Debt Bondage, Harsh Treatment or Intimidation of Workers

Guidance: The GLA will take a very serious view of any evidence of abuse against workers in the following categories. Employment must be freely chosen and no-one must be retained against their will, whether or not there is a debt owing.

⁷ Scottish provisions apply only to workers engaged in **agriculture** (the definition of which also includes horticulture, some fish farming and, through case law, packaging produce grown within the same business enterprise). What it does not include is most fish processing, shellfish gathering and secondary packaging/processing where National Minimum Wage Rules apply.

If a worker is loaned money by the Labour Provider to meet travel or other expenses in order to take up a position, they must be provided with details in writing of the amount loaned and the agreed repayment terms.

If loan repayments are deducted from workers' wages, they must give their written permission for this to be done.

Workers (including those whose first language is not English) should be aware of how to seek redress or make a complaint where there has been harassment. There should be no evidence that a Labour Provider does not deal with such cases properly.

An inspection will seek to assure that:

Unfair Treatment

LS 3.1 C Workers are not subjected to physical or mental mistreatment.

Existence of any Bonded Debt: for Travel, Unearned Wages, Job Transfer

LS 3.2 C There are no debts to the Labour Provider that prevent a person freely seeking other employment.

LS 3.3 M Any debts properly entered into, or agreed recoveries from wages, are in writing and do not seek to cover more than the amount agreed or the recoveries allowed.

LS 3.4 M No worker is disadvantaged from taking up permanent employment by the imposition of a transfer fee other than that allowed in regulations.

LS 3.5 R A worker is not penalised for giving notice, nor does the worker have to pass on details of any new employment.

Employment Freely Chosen

LS 3.6 C That a person has freely chosen that employment and not because they were kept against their will and are free to leave their employment/job without incurring (or fear of incurring) a penalty.

Passports / Identity not Retained

LS 3.7 C Workers are not required to surrender identity papers such as passports, beyond initial illegal working checks, for retention (see section 10.1 below).

Harassment, Abuse, Complaints Procedures

LS 3.8 Co Disciplinary matters or complaints are properly dealt with by the Labour Provider.

Confidentiality

Guidance: The Data Protection Act as well as the Labour Provider's duty to safeguard workers' interests, requires careful handling of any confidential information. Generally the

written consent of the worker must be obtained before passing on any personal information to others. Certain statutory bodies (including the GLA) have the power to ask for records, examine them, copy them or even retain them.

It cannot be made a condition of employment that they give that consent.

An inspection will seek to assure that:

- LS 3.9 **R** A Labour Provider does not disclose information relating to a worker, without the prior consent of that worker, except:
- for the purposes of any legal proceedings (including arbitration)
 - in the case of a worker who is a member of a professional body, to the professional body of which they are a member
 - for the purposes of apprehension or prosecution of offenders
 - for the purposes of national security or
 - as required by any other enactment of law

LS 3.10 **Co** Data and records are kept securely

Licensing Standard 4: Workers' Accommodation

Guidance: Any accommodation provided, or effectively provided, by the Labour Provider should conform to current legislation. There should be no evidence of poor or overcrowded conditions or failure to conform to local housing regulations on Housing of Multiple Occupation. Any charges for accommodation must be compliant with the national and agricultural minimum wage regulations.

A licence holder may not arrange for a worker to take up a position other than as a Labour User's employee (within the meaning of section 230(1) of the Employment Rights Act 1996) if, in order to take up that position, the worker must occupy accommodation other than their home, unless:

- suitable accommodation will be available for the worker
- details have been provided to the worker, including the terms on which it is offered and any cost
- suitable arrangements have been made for the worker to travel to such accommodation and for them to travel home

If a worker is under the age of 18, a Labour Provider may not arrange for them to take up a position that will require them to live away from home unless the parent or guardian of the worker has consented.

An inspection will seek to assure that:

- LS 4.1 **M** No under-18 year-olds are compelled to stay away from home for work purposes.
- LS 4.2 **M** Where workers live in accommodation provided by the Labour Provider, they are allowed to find suitable alternative accommodation after giving an agreed notice period.
- LS 4.3 **C** Where workers live in accommodation provided by the Labour Provider, it contains appropriate facilities (e.g. water, power, heating, bedding, sanitation)

and is safe for its inhabitants. The GLA will expect to see evidence that any electrical equipment provided for cooking, heating, recreational or similar use is being properly maintained and that tenants have been supplied with copies of the most recent gas safety certificate as required by the current Gas Safety (Installation and Use) Regulations.

[Scotland only Where appropriate, accommodation is licensed or registered in accordance with the Antisocial Behaviour etc (Scotland) Act 2004 (Part 8, registration of landlords) or the Civic Government (Scotland) Act 1982 (Licensing of Houses in Multiple Occupation) Order 2000.]

[England, Wales only There should be no evidence that the room and space standards set out in the Housing Act 1985 are breached nor that there is evidence of misuse of Houses of Multiple Occupation (HMO).]

Licensing Standard 5: Hours Worked, Working Time Regulations, etc

Guidance: An accurate record of hours worked by workers must be kept and made available for inspection. An opt out of the Working Time Regulations 1998 (as amended) must be a free choice by the worker and substantiated by a written, signed agreement. There must be no evidence that workers are being exploited as a consequence of failure to observe these provisions.

The Labour Provider must allow workers to take the breaks to which they are entitled during the working day. (See also Section 6 of these Standards concerning drivers)

An inspection will seek to assure that:

LS 5.1 **M** Workers are allowed to take statutory breaks.

LS 5.2 **M** There is evidence that any workers working in excess of 48 hours per week have freely signed an opt-out.

LS 5.3 **M** Accurate records are kept of days and hours worked for all workers.

Licensing Standard 6: Breaches in Health and Safety, Including Training

Guidance: Health and Safety legislation is complex but is an essential element of the arrangements under which labour is provided and works. The allocation of responsibility under the legislation depends on the relationship between the Labour Provider and Labour User. In many cases the employer, for the purposes of applying health and safety legislation, is likely to be the Labour User; but this will not necessarily always be the case.

The GLA will expect clarity about and written clarification as to whether the Labour Provider or Labour User will be responsible for managing the health and safety of the workers provided. The conditions at work to which workers are exposed should comply with the legislation. This extends to transport arrangements and the place(s) of work.

It is particularly important that adequate Health and Safety training is given to workers and that the Labour Provider and Labour User have agreed, in writing, who will be responsible for providing that training. No charge may be made for such training, which should take place during working hours.

Any vehicles used by the Labour Provider to transport workers to and from their place of work must be roadworthy, legal and driven only by drivers holding appropriate licences.

An inspection will seek to assure that:

- LS 6.1 **M** The Labour Provider has co-operated with the Labour User to ensure that:
- responsibility for managing the health and safety of workers has been agreed and assigned; and that
 - the health and safety risks to which they may be exposed at work are properly controlled
- LS 6.2 **M** The Labour Provider has co-operated with the Labour User to ensure that responsibility for:
- The provision of information to workers about any special qualifications or skills they require to do the work for which they have been employed has been agreed and assigned
 - Any health and safety training, including induction training deemed necessary to carry out the work safely has been agreed and assigned; and that
 - The workers provided have received any necessary health and safety (including induction) training appropriate to the site(s) at which they are working and the work they have been employed to do. The information and training should be comprehensible
- LS 6.3 **Co** Where a Labour User employs more than five persons, or a Labour Provider provides 5 or more workers to a Labour User, the significant findings of any risk assessments should be recorded in a form which is retrievable and available to safety or other worker representatives or to inspectors from the GLA or the Health and Safety Executive.
- LS 6.4 **R** No charge is made for Health and Safety training required to carry out work and any time spent on training (including any training arranged outside of an employee's normal working hours) is treated as an extension of time at work.

Safe Place of Work

- LS 6.5 **M** The Labour Provider has co-operated with the Labour User to ensure that working conditions at the site(s) to which workers are provided comply with relevant health and safety legislation.
- LS 6.6 **M** The Labour Provider has co-operated with the Labour User to ensure that:
- Adequate and appropriate personal protective equipment has been provided to the workers they supply; and that
 - Adequate arrangements have been made with regard to the provision of sanitary conveniences, washing facilities, drinking water, facilities for changing clothes and for rest and the consumption of food and drink, for first aid and the recording and reporting of reportable accidents and cases of ill health at work

Transport Arrangements

- LS 6.7 **M** Evidence that drivers or workers operating vehicles, mobile machinery or plant are not under age. They should also hold a current, relevant licence or certificate which is required by legislation and should not drive in excess of their permitted hours.
- LS 6.8 **C** Labour Providers' Vehicles are being maintained and that there are no obvious/identifiable serious safety defects.
- LS 6.9 **R** There is documentary evidence that all vehicles used by Labour Provider for transporting workers are appropriately registered with the DVLA or the country of origin, have a valid vehicle licence (tax disc), MOT certificate (if required) and insurance.
- LS 6.10 **R** There are records of all drivers including their names, driving licence number and type.
- LS 6.11 **M** There is documentary evidence that vehicles with eight or more passenger seats used for hire or reward are registered as Public Service Vehicles (PSV) and that drivers have Passenger Carrying Vehicle (PCV) entitlement.

Licensing Standard 7: Recruitment and Contractual Arrangements

Guidance: Recruitment must be fair and open and non discriminatory in accordance with UK legislation.

There must be written terms of engagement whether a contract of employment or a contract for services with workers and these must not be changed without their written consent. Workers should understand the terms on which they have been taken on including procedures to be followed if they are found to be unsatisfactory or unsuitable for the work for which they were hired.

The agreement between the Labour User and the Labour Provider should be in writing (see App 1, section 2)

An inspection will seek to assure that:

Recruitment

- LS 7.1 **R** Applicants for employment are not discriminated against when employment is offered.
- LS 7.2 **Co** A Labour Provider will not have supplied a worker to a Labour User unless they have confirmed:
- The identity of the worker
 - That the worker has the experience, training, qualifications and any authorisation which the Labour Provider or Labour User considers is necessary, or which is required by law or by any professional body
 - The worker is willing to work in the position which the Labour User seeks to fill
 - Workers are not charged a finder's fee for finding them work
 - They are not obliged to use the services of the Licence Holder to hire or purchase goods or services as a condition of finding work

Terms and Conditions

Guidance: Terms and conditions should be in a format that can be easily read and understood and workers should be given the opportunity to raise concerns or queries in relation to those terms before being supplied to a Labour User.

A Labour Provider may not enter into a contract with a Labour User on a worker's behalf or on behalf of the Labour User with the worker, without that worker's express permission.

LS 7.3 M There is evidence that all workers who have been employed continuously for one month or more under a contract of employment have a written statement of employment particulars. Or, if workers are engaged under contracts for services, there is evidence that these are agreed and provided to the workers before work commences.

The terms that must be agreed include:

- Whether the worker is or will be supplied by the licence holder under a contract of employment, or for services, and the terms and conditions that will apply
- An undertaking to pay the worker for any work carried out regardless of whether the Labour Provider has been paid by the Labour User
- The length of termination the worker is required to give and entitled to receive, if any
- Either the worker's pay rate, or the minimum rate to be expected
- The intervals at which the earnings will be paid; and details of any entitlement to paid holidays, SSP and other benefits

LS 7.4 M There are no changes made either to contracts of employment or contracts for service without written consent by the employee.

LS 7.5 Co No Labour Provider may introduce a worker for direct employment by a Labour User and continue to pay them (or make arrangements for such payment).

Licensing Standard 8: Sub-contracting

Guidance: A Labour Provider who sub-contracts becomes a Labour User for the purposes of the Gangmasters (Licensing) Act and must ensure that the sub-contractor he engages is licensed by the GLA.

The Labour Provider cannot sub-contract any responsibilities with a Labour User to another Labour Provider without the prior consent of that Labour User, which must be in writing.

A Sub-contracting Labour Provider must provide the Labour User (including the Labour Provider to whom they are sub-contracting) with their URN (Unique Reference Number) as well as any other licence details (including Additional Licence Conditions, if any), if so requested.

They must keep proper records as detailed in Appendix 1 (Record Keeping).

An inspection will seek to assure that:

LS 8.1 C Any Subcontractors used must be properly and currently licensed by the GLA

LS 8.2 **M** The names and any other names of any sub-contractor(s) used are recorded as well as details of workers provided and the number of hours worked by them as laid down in App 1, paragraph 2

LS 8.3 **Co** There is documentary evidence of the agreement between the Labour Provider and all sub-contractors.

LS 8.4 **Co** The Labour Provider has the worker's permission before transferring them to another Labour Provider.

Licensing Standard 9: Identity Issues, Under-Age Working

Guidance: The identity of all workers must be known to the Labour Provider and verified. Proper records must be maintained which identify each worker and the hours they work. The GLA Licensing Conditions require that the Labour Provider must ensure that those workers supplied can be identified by the Labour User. See App 1, paragraph 1 concerning the records that must be kept.

The law prohibits under-age working. Any offences identified will be treated very seriously and passed on to the relevant Authorities.

An inspection will seek to assure that:

Identity Issues

LS 9.1 **M** Records on workers' files include their name, date of birth, address, NI number, and documentation showing their entitlement to work in the UK.

Proof of Age (Underage Working)

LS 9.2 **M** Details of any work activities, including times and dates worked, carried out by children and young workers are held on file.

LS 9.3 **R** There are copies of adequate and suitable risk assessments available where young persons are employed.

LS 9.4 **M** Children and/or young persons are only carrying out work permitted by law.

Licensing Standard 10: Legality and Rights of Workers

Guidance: Only those who are legally able to work may be employed. It is essential that Labour Providers ensure that proper records are kept and checks made in line with Home Office guidance.

To demonstrate compliance with 10.1.1 (below), Labour Providers should be able to produce copies of supporting documentation that confirms a person's entitlement to work in the UK (Copies means a photocopy or recording of the document electronically). The specified documents in question are detailed in the:

- Immigration (Restrictions on Employment) Order 1996 (for workers employed from 27 January 1997 to 30 April 2004)
- Immigration (Restrictions on Employment) Order 2004 (for workers employed since 1 May 2004).

Labour Providers must respect a worker's right to belong to a Trade Union and to participate in its activities.

An inspection will seek to assure that:

**Legality of Workers (Section 10), Section 8 of the Asylum and Immigration Act 1996
Fulfilled**

LS 10.1 **M** All workers are legally entitled to work in the UK. Employers will be required to show they have complied fully with Section 8 of the Asylum and Immigration Act 1996 in relation to workers employed since January 1997.

LS 10.2 **R** There should be no evidence of student workers (who generally have the limited right to work as part of their leave to remain in the UK) working in excess of 20 hours per week during term time.

Trade Union Matters

LS 10.3 **M** Workers are not prevented from taking Trade Union membership and are not penalised for doing so.

LS 10.4 **R** A Labour Provider must not supply a worker to carry out the duties of a worker involved in an official industrial dispute or to perform the duties of any other worker employed by the Labour User who has replaced the worker on strike.

Appendix 1: Record Keeping

Guidance: The Licence Conditions attached to the main Gangmasters (Licensing) Act 2004 requires in addition to the above provisions, that the Labour Provider keeps the following records. These are appended for information. It is expected that Labour Providers will adhere to them. Most are included in the main body of the Licensing Standards, especially Section 8 (Sub-contracting) and Section 9 (Identity issues). Records may be kept manually or electronically.

Any shortcomings in this section alone will not count towards the scoring of errors as part of any inspection, except where they appear in the main body of the Licensing Standards above.

1. Every Labour Provider must record, as soon as reasonably practicable, the following details in relation to every application received from a worker:
 - the date the terms between the licence holder and worker were agreed
 - the worker's name, address and date of birth
 - any terms which apply or will apply between the licence holder and the worker, and any document recording any variation
 - any details of the worker's training, experience or qualifications and any authorisation to undertake particular work (and copies of any documentary evidence of the same obtained by the Labour Provider)
 - details of any requirements specified by the worker in relation to taking up employment
 - the names of Labour Users or sub-contractors to whom the worker is supplied
 - details of any resulting engagement and the date from which it takes effect
 - the date the contract was terminated (where applicable) and

- details of any enquiries made about the worker and the position concerned with copies of all relevant documents
2. Every licence holder must record, as soon as reasonably practicable, the following details relating to Labour Users:
- the date terms are agreed between the licence holder and the Labour User
 - the Labour User's name and address, and location of the place of work if different
 - details of any sub-contractors
 - details of the position(s) and type of work the Labour User seeks to fill
 - the duration or likely duration of the work
 - any experience, training, ability, qualifications, and authorisation required by the licence holder or Labour User by law, or by any professional body; and any other conditions attaching to the position(s) the Labour User seeks to fill
 - the terms offered in respect of the position(s) the Labour User seeks to fill
 - a copy of the terms between the licence holder and the Labour User, and any document recording any variation
 - the names of workers supplied
 - details of enquiries about the Labour User and the position they seek to fill, with copies of all relevant documents and dates of their receipt
 - the details of each resulting engagement and date from which it takes effect and
 - dates of requests by the Labour Provider for fees or other payment from the Labour User and of receipt of such fees or other payments, and copies of statements or invoices
3. Every Labour Provider must record, as soon as reasonably practicable, the following details relating to other Labour Providers:
- names of any other licence holders whose services the licence holder uses, and details of enquiries made to ascertain that the other licence holder is licensed
 - date and copy of any agreement to sub-contract
 - These records must be kept for at least one year. The records may be kept at any premises a Labour Provider uses for or in connection with the carrying on of his business, or elsewhere. If kept elsewhere the licence holder must ensure that they are readily accessible and capable of being delivered to the licence holder's UK premises or the Authority within two working days. All records may be kept in written or electronic form.