



Department
for Environment
Food & Rural Affairs

www.gov.uk/defra

Consultation on changes to the scope and governance of the Gangmasters Licensing Authority

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This document/publication is also available on our website at:

https://consult.defra.gov.uk/food/gangmasters_licencing

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Chapter 1: Purpose, scope, and process of consultation

Purpose

The purpose of this consultation is to seek views on the Government's plans to change underpinning legislation to amend the scope of GLA licensing, to change the size and structure of the GLA Board and to suggest ideas for alternative sanctions that the GLA might use to tackle transgressions in this area.

Scope of the consultation

The GLA operates in England, Wales, Scotland and Northern Ireland and this consultation affects the organisation's operations in all these territories.

Separately from this Defra consultation the GLA have carried out a consultation on the administration of their licensing arrangements. That reviewed the GLA application inspection process and related procedures seeking views on how the GLA can improve the license application process in a manner that reduces the costs and burdens for applicants but ensures that those individuals and organisations that represent the greatest risk of non-compliance with the GLA's licensing standards and therefore potential risk to workers continue to be tested in a robust but proportionate manner.

The GLA consultation set out proposals for change in the following areas: the application inspection process, earned recognition, license renewal process and changes to the public register and active check process.

The GLA consultation opened on 28 January 2013 and closed on 22 March 2013.

Impact Assessment

An Impact Assessment on the impact of the changes to the GLA is published separately to accompany this consultation. You are also invited to comment on the estimates and assumptions made in the Impact Assessment and to let us have your own views on the impact, with your reasons.

You can find copies at https://consult.defra.gov.uk/food/gangmasters_licencing on the Defra website. Alternatively, if you would like to receive hard copies of this document, you may call Stephen Moorcroft at Defra on 0207-238-6295 and one will be sent to you.

Deadline for comments

The closing date for this consultation is 21 June 2013. Responses may be made by completing the online form at https://consult.defra.gov.uk/food/gangmasters_licencing.

Alternatively, responses can be sent to the following email address: GLAConsultationEnquiries@defra.gsi.gov.uk or by post to Stephen Moorcroft at Defra, Area 3A, Nobel House, 17, Smith Square, LONDON SW1P 3JR.

Confidentiality

In line with Defra's policy of openness, at the end of the consultation period, copies of the responses we receive may be published in a summary of the responses to this consultation. If you do not consent to this you must clearly request that your response be treated as confidential. Any confidentiality disclaimer generated by your IT system in email responses will not be treated as such a request. Respondents should also be aware that there may be circumstances in which Defra will be required to communicate information to third parties on request in order to comply with obligations under the Freedom of Information Act 2000.

Compliance with the Government's Consultation Principles

This consultation complies with HM Government's Consultation Principles which can be found at: <https://www.gov.uk/government/publications/consultation-principles-guidance>

Chapter 2: Background to the Gangmasters Licensing Authority

Section 1 – Gangmasters (Licensing) Act 2004

The Gangmasters (Licensing) Act 2004 (the 2004 Act) provides for a licensing scheme to regulate the supply of labour to the farming, food processing and shellfish gathering sectors and establishes a non-departmental public body, the Gangmasters Licensing Authority (GLA), to administer the scheme. Regulations made under the Act regulate how the GLA operates internally and define the scope and operation of its licensing and enforcement powers.

For the purposes of the 2004 Act a gangmaster is a person who supplies a worker to do work covered by the Act or who uses a worker to do work covered by the Act in the course of providing a service, or makes arrangements for that worker to do the work. The 2004 Act defines the sectors for which a labour provider is obliged to obtain a gangmasters licence prior to commencing the supply of workers. The legislation was deliberately drafted as broadly as possible in order to limit the potential for the development of legal loopholes which could be used to circumvent the licensing scheme.

Exclusion Regulations produced in 2006 and 2010 reduced the scope of licensing arrangements, removing the supply of workers for some activities from the need to be covered a gangmasters licence because they were considered to pose a low risk of exploitation.

Section 2 - What is the Gangmasters Licensing Authority and what does it do?

The 2004 Act establishes a non-departmental public body, the Gangmasters Licensing Authority (GLA), to administer the scheme.

The mission statement of the GLA is: 'To safeguard the welfare and interests of workers whilst ensuring Labour Providers operate within the law' and they will achieve this by:

- introducing and operating a system to license Labour Providers, including a publicly accessible register;
- effective communication of the legal requirement for Labour Providers to become licensed, and to operate and remain within the formal economy;
- imposing the least possible burden on Labour Providers and Labour Users through efficient and effective processes and procedures;
- developing and promoting standards for best practice in the supply and use of temporary labour, in collaboration with stakeholders;

- checking license holders for continued compliance with the license conditions;
- taking enforcement action against those who operate illegally or who for other reasons are judged unfit to hold a license;
- supporting enforcement of the law, by or in conjunction with the enforcement authorities of other Government Departments, and others as appropriate, through shared information and joint working;
- maintaining a continuous review of the activities of Gangmasters and the effects of the Act and the Authority on them.

<http://gla.defra.gov.uk/Who-We-Are/Mission-Statement/>

The 2004 Act created four offences arising from the licensing scheme: operating as an unlicensed gangmaster; or possessing a false document for the purpose of deceiving others regarding whether they are licensed; entering into arrangements with an unlicensed gangmaster; and obstructing GLA officers in their duties.

Compliance with the legislation is assessed using information held by Government Departments (e.g. United Kingdom Borders Agency, Her Majesty's Revenue and Customs) and from inspection when a new licence is applied for. The GLA also carries out risk based inspections and responds to specific complaints of abuse that are raised.

In 2012/13 the GLA received some £1.4m from Defra to operate the licensing scheme and to ensure that licensed labour providers comply with the conditions of their licences. The Defra Secretary of State has also chosen to appoint the GLA to carry out enforcement of the criminal offences established by the Act and to this end it in 2012/13 it provided the GLA with an additional £2.6m.

Section 3 - Current Licensing process

Gangmaster licences are valid for a year. Currently new applicants must pay for an application inspection carried out by the GLA. Provided a licence holder applies for their licence to be renewed before the old one expires any inspection is undertaken free of charge and only the cost of renewal is collected. The criteria a business must meet in order to be issued with a gangmaster licence are set out in the Gangmaster Licensing Authority [Licensing Standards 2012](#). Compliance with the Standards is, in most cases, achieved by meeting the requirements of a range of employment, health and safety and other regulations.

The licensing scheme came into force in April 2006 and at present there are approximately 1200 licensed labour providers. License and application inspection fees vary according to the annual turnover of the business and are set out in the table below.

Fee table

<i>Annual turnover</i>	<i>Fee Band</i>	<i>Application or renewal fee</i>	<i>Inspection fee</i>
£10 million or more	A	£2,600	£2,900
From £5 million to less than £10 million	B	£2,000	£2,400
From £1 million to less than £5 million	C	£1,200	£2,150
Less than £1 million	D	£400	£1,850

Chapter 3: Why is the Government proposing the changes to the Scope and Governance of the GLA?

Section 1 – The need for GLA to continue to protect vulnerable workers

The Government is committed to protecting vulnerable workers from exploitation by unscrupulous gangmasters. The Government also wants to provide an environment for all sectors of the economy in which private enterprise and businesses can flourish. To do so, the Government wishes to remove unnecessary red tape and administrative burden. A specific Defra objective is to support and develop farming and encourage sustainable food production. Regulations which impose unnecessary regulatory and administrative burden on farm businesses, not shared by any other sector of the economy can hinder the achievement of the Defra objective.

Section 2 - The Red Tape Challenge Process

A key Coalition commitment is the cross-Government review (known as the Red Tape Challenge) of all regulatory law including employment-related law. Reviews are taking forward a number of measures aimed at reducing burdens on business by simplifying regulatory legislation to give employers the flexibility to run their business effectively and have the confidence to take on staff and grow.

The review of the operation of the GLA licensing scheme, undertaken as part of the Red Tape Challenge during the autumn of 2011, concluded that the most vulnerable workers in the regulated sectors should continue to receive the protection offered by the licensing regime. However, the review recognised that the circumstances of supply of workers in some areas covered by licensing pose no serious risk of exploitation. The review recommended reducing the burden of inspections and fees on established, compliant businesses, whilst at the same time focussing more closely on the gross abuse of workers with an increased commitment to tackling any unscrupulous gangmasters committing crimes including tax evasion, trafficking, health and safety negligence and other serious crimes. The GLA will target suspected serious and organised crime by working more closely with the Serious Organised Crime Authority, its successor, and other specialist law enforcement agencies across Government. The review also concluded that the current sanctions available to the GLA would not provide the flexibility it requires to carry out its compliance and enforcement roles effectively and proportionately in the future.

The Defra Minister of State made a statement to Parliament in May 2012 on the outcomes of the Red Tape Challenge review on the operations of the GLA. The full text of the Written Ministerial Statement can be found at Annex 1.

Section 3 - The Farming Regulation Task Force

The Farming Regulation Task Force led by Richard MacDonald presented its recommendations to Government in May 2011 for reducing the administrative burden

faced by farmers and food producers. This endorsed the Government's 2010 Arms Length Bodies Review's decision to retain the GLA and welcomed the efforts the GLA have made towards developing a lighter touch regulatory process recommending a further move towards a more targeted, risk based approach. The Task Force also highlighted the need to apply "earned recognition" across inspection regimes and proposals in the GLA consultation on application inspections and length of licenses address this issue.

A copy of the Report of the Farm Regulation Task Force can be accessed here: [Farming Regulation Task Force](#)

Section 4 -The Forestry Regulation Task Force

The [Forestry Regulation Task Force](#) reported in October 2011. The Task Force expressed concern at the effect that licensing is having on small businesses, on their profitability and in some cases their survival. It found that the lack of prosecutions for exploitation of forestry workers demonstrates that the forestry sector is low risk and should be removed from the scope of GLA licensing. Removing the forestry sector from the scope of the Gangmasters Licensing Act would free up resources within the GLA which could then be directed at ensuring compliance within the highest risk sectors.

Separately the GLA has introduced a 'lighter touch' in the forestry industry to test a new approach to regulation, which commenced in August 2011, before the Task Force recommendations were made. Following the Forestry Task Force findings and since August 2011 the GLA has operated a pilot scheme to test a number of approaches to assess whether a different method effectively regulates the sector without additional burdens and risks, or whether it allows increased risk to develop. The pilot removed the requirement for an application inspection in all cases. No problems have arisen and recently the pilot has been extended to remove all licensing fees in the sector.

Chapter 4: Proposed changes to the scope of GLA licensing

Section 1 - Exclusions from licensing under consideration

The 2004 Act defines the sectors for which a labour provider is obliged to obtain a gangmasters licence prior to commencing the supply of workers. The Act was deliberately drafted as broadly as possible in order to limit the potential for legal loopholes which might be used to circumvent the licensing scheme. Exclusion Regulations produced in 2006 and 2010 enabled the fine tuning of the scope of the licensing arrangements, by specifying circumstances where a person does not need to obtain a gangmaster's licence, removing some sectors from the scope of GLA Licensing.

The GLA has refined its understanding of patterns of exploitation and it has concluded that a number of activities for which a licence is required pose a very low risk of worker exploitation. It has found that labour providers operating in these areas already demonstrate a high degree of compliance with employment, health and safety and other regulations.

What is proposed is, whilst most broad sectors will remain within the scope of GLA licensing, including general agriculture, horticulture and food processing and packaging, where the majority of gangmasters operate, certain low-risk areas should be excluded removing costs from those business that currently have to be licensed and freeing up resource in the GLA to focus efforts on more serious criminal activity and abuse.

For example, it has been observed that of some 169 cases of violation and consequent revocation reported by GLA since 2006, only one case corresponded to the low risk sectors set out below. In total there has been one case of revocation and two refused licences in these sectors - all of these in the forestry sector. Regulating such low-risk businesses imposes disproportionate financial and administrative burdens and diverts GLA resources away from higher risk businesses.

The total number of businesses falling into the sectors suggested for exclusion is small (with the exception of the forestry sector), representing only about 1% of total licensed businesses and there is little evidence of exploitation of workers in these sectors. Whilst the numbers of businesses in these sectors may be few, for those businesses affected meeting licensing requirements represents an unwelcome financial and administrative burden.

This proposal would help to deliver the government's objective to focus the GLA's activities on protecting the most vulnerable workers.

Exclusions from the scope of licensing under consideration are:

Apprenticeships - the supply of apprentices by organisations operating as Apprentice Training Agency (ATA) type recruitment and employment models. Currently if a recognised educational establishment provides workers to farms as part of a recognised apprenticeship a licence is not required. Similarly a Group Training Agency (GTA), where a group of employers come together to provide training where the apprentices are employees of one of the organisations that is a member of the GTA does not require a licence. However ATAs recruit and employ apprentices and hire them out to a host employer for the duration of the apprenticeship and currently do require a licence;

Cleaning contractors - The use of workers by businesses operating in the food processing production line which provide cleaning services;

Cultivated Shellfish – The use of workers by businesses holding Crown or Local Authority permits which confer exclusive rights to gather process and package cultivated shellfish. NB: with gathering of wild shellfish remaining in scope of the GLA;

Forestry – All recruitment or employment in the forestry sector other than in respect of orchards, woodland pasture and free range egg production which would remain within scope;

Land Agents – Any professional agent engaged or contracted by a landowner to manage the day-to-day running of their estates;

Voluntary workers – The use and supply of voluntary workers to undertake conservation and other work on farmland or voluntary work in other regulated areas or activities;

Public and Quasi Public bodies (including Government Department, agencies, NDPBs and private and voluntary sector partner organisations) – the supply of a worker during the delivery of schemes to reintroduce the unemployed back into work on behalf of Government and its agencies;

Raising crops and livestock as a service to a third party – The use of workers by a farmer who enters into arrangements with a third party to raise agricultural crops and livestock where ownership of the crops and stock raised remains with the third party.

The GLA will continue to be receptive to intelligence that is indicative of any exploitation in newly excluded sectors and if there is clear evidence of systematic abuse it will be possible to introduce secondary legislation to bring sectors back under GLA regulation.

CONSULTATION QUESTIONS

1. Do you agree that the sectors listed in Chapter 4 are sectors where the risk to workers of exploitation is low and can safely be excluded from the scope of GLA licensing?
2. Are there other sectors with a low risk of worker exploitation that you think should be excluded from the scope of GLA licensing? What is the evidence for this?

Chapter 5: Proposed changes to the Governance of the GLA

Section 1 – Current Board arrangements

Under the terms of the Gangmasters (Licensing Authority) Regulations 2005, the GLA Board has 29 members, made up of the Chair (appointed by Ministers), 19 representative members (which are nominated by the organisations listed in the Regulations - set out below – and appointed by Ministers) and 9 ex officio members from Government departments.

This structure was originally introduced to encourage the widest possible range of stakeholders to participate in the setting up of the GLA, thereby ensuring the necessary degree of acceptance of the licensing scheme within the regulated sectors. This objective was met in large part. However, at the time the GLA was established, it was recognised that having a large representative Board might have disadvantages. As a consequence it was agreed that the structure of the Board would be reviewed periodically.

Organisations Eligible to nominate representative members of the Board

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

Appointment of *ex officio* members of the Board

Secretary of State for Home Affairs	1
Secretary of State for Work and Pensions	1
Secretary of State for Environment, Food and Rural Affairs	1
The Commissioners of Inland Revenue and the Commissioners of Customs and Excise jointly	1
Secretary of State for Trade and Industry	1
The Director General of the Health and Safety Executive	1
The Scottish Ministers	1
The National Assembly for Wales	1
The Minister for Agriculture and Rural Development for Northern Ireland	1

Section 2 – Cabinet Office Guidance on Board of NDPBs

The Written Ministerial Statement on the outcomes of the Red Tape Challenge (Annex 1) set out the aim to amend the structure of the Board of the GLA and introduce a smaller board to provide clear strategic leadership and direction to the GLA.

Guidance is issued by the Cabinet Office which sets out best practice for the Boards of public bodies and sets out principles of good corporate governance in executive non-departmental public bodies. The following is an extract from that guidance on the role of the Board and non-executive Board members:

Role of the Board

Principles

The public body is led by an effective board which has collective responsibility for the overall performance and success of the body. The board provides strategic leadership, direction, support and guidance.

The board – and its committees – have an appropriate balance of skills, experience, independence and knowledge.

There is a clear division of roles and responsibilities between non-executive and executives. No one individual has unchallenged decision-making powers.

Supporting provisions

- The board of the public body should:
 - meet regularly;
 - retain effective control over the body; and
 - effectively monitor the senior management team.
- The size of the board should be appropriate.
- Board members should be drawn from a wide range of diverse backgrounds.
- The board should establish a framework of strategic control (or scheme of delegated or reserved powers). This should specify which matters are specifically reserved for the collective decision of the board. This framework must be understood by all board members and by the senior management team. It should be regularly reviewed and refreshed.
- The Board should establish formal procedural and financial regulations to govern the conduct of its business.

- The Board should establish appropriate arrangements to ensure that it has access to all such relevant information, advice and resources as is necessary to enable it to carry out its role effectively.
- The Board should make a senior executive responsible for ensuring that appropriate advice is given to it on all financial matters.
- The Board should make a senior executive responsible for ensuring that Board procedures are followed and that all applicable statutes and regulations and other relevant statements of best practice are complied with.
- The Board should establish a remuneration committee to make recommendations on the remuneration of top executives. Information on senior salaries should be published. The board should ensure that the body's rules for recruitment and management of staff provide for appointment and advancement on merit.
- The Chief Executive should be accountable to the Board for the ultimate performance of the public body and for the implementation of the Board's policies. He or she should be responsible for the day-to-day management of the public body and should have line responsibility for all aspects of executive management.
- There should be an annual evaluation of the performance of the board and its committees – and of the Chair and individual board members.
- The roles of Chair and Chief Executive should be held by different individuals.

Role of Non-Executive Board Members

Principle

As part of their role, non-executive board members provide independent and constructive challenge.

Supporting provisions

- There should be a majority of non-executive members on the board.
- There should be a formal, rigorous and transparent process for the appointment of non-executive members of the board. This should be compliant with the *Code of Practice* issued by the Commissioner for Public Appointments
- The duties, role and responsibilities, terms of office and remuneration of non-executive board members should be set out clearly and formally defined in writing. Terms and conditions must be in line with Cabinet Office guidance and with any statutory requirements. The corporate responsibilities of non-executive board members (including the Chair) will normally include:
 - establishing the strategic direction of the public body (within a policy and resources framework agreed with Ministers);
 - overseeing the development and implementation of strategies, plans and priorities;

- overseeing the development and review of key performance targets, including financial targets;
 - ensuring that the public body complies with all statutory and administrative requirements on the use of public funds;
 - ensuring that the board operates within the limits of its statutory authority and any delegated authority agreed with the sponsoring department;
 - ensuring that high standard of corporate governance are observed at all times. This should include ensuring that the public body operates in an open, accountable and responsive way; and
 - representing the board at meetings and events as required.
- All non-executive Board members must be properly independent of management.
 - All non-executive board members must allocate sufficient time to the board to discharge their responsibilities effectively. Details of board attendance should be published (with an accompanying narrative as appropriate).
 - There should be a proper induction process for new board members. This should be led by the Chair. There should be regular reviews by the Chair of individual members' training and development needs.

<http://www.cabinetoffice.gov.uk/sites/default/files/resources/Cabinet-Office-Guidance-on-Reviews-of-Non-Departmental-Public-Bodies.pdf>

Size of the GLA Board

On the size of the Board Cabinet Office Guidance says simply that the size should be appropriate. The Cabinet Office publication, Public Bodies 2012, has information on the size of Board of all Non-Departmental Public Bodies and the following are illustrative examples:

SEAFISH

Supports all sectors of the seafood industry for a sustainable, profitable future and aims to support and improve the environmental sustainability, efficiency and cost-effectiveness of the industry, as well as promoting sustainably-sourced seafood. Seafish is funded by a levy on the first sale of seafood landed and imported in the UK.

Seafish have established three stakeholder panels representing (i) domestic / catching sector, (ii) import / processing sector and (iii) the consumer / retail / food service sectors. The panels provide the Board with agreed priorities for their sector, recognising the differences which may exist at a local or regional level. Seafish worked with industry to determine the structure and the method of appointment to

these panels. The Chair of each panel attends the Board to further strengthen industry input into the decision making process

Staff employed (Full Time Equivalent): 72

Annual funding from Government of £6.5m

Board: Chair and eight Ministerial appointments

Agriculture and Horticulture Development Board

Functions defined in AHDB Order 2008. Funded by agriculture industry through statutory levies with the purpose to improve the competitiveness and sustainability of the industries which fund it;

Six members of the Board acts as Chairs of the Sector Boards covering Horticulture, Cereals and Oilseeds, Pigs, Beef and Lamb, Potatoes and Dairy. These Sector Boards include some levy payers as members as well as industry stakeholders who help shape AHDB's work programme and develop appropriate strategies to meet the challenge of each sector;

Staff employed (Full Time Equivalent): 430;

Annual funding from Government: £61m;

Board: Chair and nine Ministerial appointments.

Security Industry Authority

The Security Industry Authority (SIA) is the organisation responsible for regulating the private security industry. They are an independent body reporting to the Home Secretary, under the terms of the Private Security Industry Act 2001.

The SIA reach wide-ranging groups of stakeholders in many ways, depending on the group or audience. In addition to general contacts through their communications strategy, at a more direct level they host sector-specific network meetings, Approved Contractor Scheme (ACS) forums as well as conferences or seminars for industry stakeholders and partners. At a higher, more targeted, level the SIA host consultative groups to gauge the thoughts of industry opinion formers, partners and colleagues in other government departments.

Board members themselves are involved in much of the face to face engagement with stakeholders (especially the conferences and some of the ACS forums).

Staff employed (Full Time Equivalent): 195

Annual funding: £28m

Board: Chair and four Ministerial appointments

Source: http://www.cabinetoffice.gov.uk/sites/default/files/resources/public-bodies-2012_1.pdf

The size of the GLA Board is clearly out of step with these other NDPBs.

Section 3 – Proposals for new GLA Board Governance

Experience suggests that the GLA Board is too large to discharge its principal responsibility of directing the affairs of the Authority.

The wide range of interests represented on the Board means the GLA lacks the benefit of more focused external input and challenge.

Streamlining the GLA Board so its size is in line with the Boards of similar public bodies will improve the efficiency of decision making, and provide the GLA with a better strategic focus for its operational activities. Widening the pool from which candidates for Board membership may be drawn beyond the organisations set out in the 2005 Regulations will increase the diversity of the Board. Changes to the structure of the GLA Board must be made via an amendment to the 2005 Regulations via an affirmative Statutory Instrument.

This consultation invites views on alternative models for the GLA Board. A move to best practice for arms length bodies would be for there to be open competition for Board places based on merit. The current mechanism whereby Board members are nominated by 15 different organisations makes it difficult to ensure the correct mix of skills that would be appropriate for the Board. It also makes it more difficult to create appropriate diversity.

An alternative governance model for the GLA might comprise some or all of the following elements:

- a clearer distinction drawn between the role of the Board which runs the GLA and the need for GLA to gather the views of its stakeholders and feed these views into GLA policy making and strategy;
- a smaller GLA Board comprising executive members and non-executive members appointed on merit; and
- a greater formal role for GLA Liaison groups, currently the Labour Provider and Labour Users Groups and possibly a re-activated Workers Liaison Group.

CONSULTATION QUESTIONS

3. Do you agree that the size and the system for GLA Board appointments should be amended to bring them more into line with best practice in other similar bodies?

4. What mechanisms would you favour to ensure that a smaller GLA Board had access to and took account of a wide range of stakeholder knowledge and viewpoints?

Chapter 6: Proposed additions to the enforcement tools available to the GLA

Section 1 - Civil Sanctions

The GLA enforces the following criminal offences under the 2004 Act:

- Section 12 – acting as an unlicensed gangmaster;
- Section 13 – using the services of an unlicensed gangmaster;
- Section 18 – obstructing a GLA officer; or making a false statement.

The maximum penalty for acting as an unlicensed gangmasters, if convicted on indictment, is ten years imprisonment, a fine or both. A person guilty of entering into arrangements with an unlicensed gangmaster is liable to a maximum penalty of one year in prison in England and Wales and six months in Scotland and Northern Ireland or a fine.

The current legislative structure available to the GLA presents difficulties for them in addressing technical offences by businesses in an appropriate and proportionate manner. The Written Ministerial Statement (Annex 1) concluded the GLA needed access to additional powers to allow them to address low-level and technical minor offences.

Providing access to certain civil sanctions to deal with technical breaches of the law would equip the GLA to enforce the offences in the 2004 Act in most cases without recourse to the Courts and without causing unnecessary disruption to business.

Section 2 - Civil sanctions as an alternative to prosecution

When the GLA finds that a business has committed an offence under the 2004 Act the only sanction currently available to it is prosecution via the Courts. In certain cases, such as where there is clear evidence of harm to others, this approach is appropriate. However where breaches of the law are technical in character recourse to the Courts can be costly financially, and in terms of the reputational harm to the businesses involved. With an enforcement regime that included the power to enter into Enforcement Undertakings the criminal offences would remain but the tools to deal with them could be extended to provide a more flexible and proportionate approach. The GLA would have the flexibility to prosecute when it is clear to them that it is appropriate to do so. All Section 18 offences would be prosecuted as such behaviour could be indicative of other wrongdoing whereas Section 12 and 13 offences would only be taken to the Courts if accompanied by aggravating factors such as worker abuse or exploitation.

This consultation proposes giving the GLA powers to enter into Enforcement Undertakings under the RES Act.

Enforcement undertakings enable a business, which a regulator reasonably suspects of having committed an offence, to give an undertaking to a regulator to take one or more corrective actions as set out in the undertaking.

Circumstances where the use of Enforcement Undertakings by the GLA would be more appropriate than prosecution include where:

- a business operates in the GLA regulated sectors without a licence but meets the requirements in the Licensing Standards for businesses applying for a gangmasters licence;
- a business has been supplied workers by an unlicensed gangmaster that is found to be compliant with the GLA Licensing Standards.

The use of Enforcement Undertakings could also be used to encourage businesses to comply with the GLA licensing scheme. At present, where businesses fail to meet the criteria for licensed gangmasters set out in the GLA Licensing Standards the only sanction available to the GLA is to revoke the licence. In circumstances where significant breaches of the standards are found this is wholly appropriate. However where breaches are minor allowing a gangmaster to continue in business, provided it took action to return to compliance, would avoid disruption to clients and workers. Circumstances where this approach could be used include where:

- a business fails to pay workers the correct minimum wage but there is no evidence of a deliberate attempt to under-pay the workers;
- a business fails to meet the additional licensing conditions agreed following an inspection, but does not reach the level of critical non-compliance which would result in their licence being revoked.

There are risks attached to the use of civil sanctions as an alternative to prosecution. For example, given that imposing a civil sanction is administratively simpler and less costly than a prosecution, overall numbers of firms against whom action is taken could potentially rise. Therefore the Government is seeking views on the way in which the GLA should operate any sanctions it is given access to, and what effect this would have on the sector as a whole.

Because cases are not brought before the Courts prior to the imposition of a civil sanction under the RES Act (although a right of appeal to a first tier tribunal against their decision exists), businesses are unable to present a defence in Court prior to action being taken. It is therefore possible, in theory, that a business could be wrongly or unfairly penalised but lack the means to remedy this until after the sanction had been imposed, with damaging economic consequences for the business.

Civil Sanction Powers available

The GLA is a designated regulator under the [Regulatory Enforcement and Sanctions Act 2008](#) and an order made under that Act would enable the GLA to make use of civil sanctions provided for under the Act.

In November 2012 the Rt Hon. Michael Fallon, Minister of State for Business and Enterprise at the Department for Business, Innovation and Skills (BIS) issued a [written ministerial statement](#) setting out Government policy on the use of civil sanctions under the Regulatory Enforcement and Sanctions Act. This stated that:

- Powers to impose Fixed Monetary Penalties, Variable Monetary Penalties and Restoration Notices will, as a general rule, only be granted where their use is restricted to undertakings with more than 250 employees;
- Powers to impose Enforcement Undertakings, Stop Notices and Compliance Notices may be granted without restriction as to the size of undertaking against whom they might be used.

Any proposals to give the GLA access to civil sanctions under the RES Act will conform to this policy. Because only a handful of gangmasters have more than 250 employees, we are not consulting on introducing Fixed Monetary Penalties, Variable Monetary Penalties or Restoration Notices under the RES Act.

Guidance on use of powers under the RES Act

The RES Act contains a number of safeguards designed to ensure that the civil sanctions powers are used fairly and properly by regulators on whom the powers have been conferred, for instance:

- Regulators must exercise the power in accordance with the better regulation principles, namely the exercise of the power must be proportionate, transparent, consistent, accountable and targeted.
- The exercise of each of the powers is subject to a right of appeal.
- Regulators granted the power to impose a civil sanction must publish guidance about its use of the sanction and revise the guidance where appropriate. Further, it must have regard to the guidance or revised guidance in exercising its functions.

CONSULTATION QUESTIONS

5. Do you agree or disagree that the GLA should have access to Enforcement Undertaking civil sanction in addition to their current powers to address breaches of the law? What is the evidence to support your answer?

6. If you agree, do you have a view on how the GLA might implement an Enforcement Undertaking civil sanction?

Chapter 7 – If a decision is made to change the operation of the GLA, how and when would the changes be implemented?

If, following this consultation exercise, a decision is made to implement these changes the Government will consider what legislative options would be suitable to make the changes.

Exclusions from Scope of licensing regime – implemented via secondary legislation subject to the negative resolution procedure;

Changes in Board Governance – implemented via secondary legislation subject to the affirmative resolution procedure;

Introduction of proposed Civil sanctions – via an Order under the Regulatory and Enforcement Sanctions Act 2008.

The timing of when the changes would be implemented will depend on the Parliamentary process but it is anticipated that some changes, e.g. exclusions from licensing, will come into effect from Autumn 2013.

Chapter 8: Conclusion

The Government believes that the combination of measures to exclude low-risk sectors from the scope of licensing, changes to the size and structure of the Board and providing access to certain civil sanctions as an alternative to prosecution offers the best option for improving the operations of the GLA. This will enable the Authority to focus more closely on the gross abuse of workers, tackling unscrupulous gangmasters committing crimes including tax evasion, trafficking and health and safety negligence whilst reducing the burdens of licensing on established, compliant businesses.

Therefore, you are invited to comment on these proposals as measures that might be carried forward through secondary legislation, subject to the outcome of this consultation.

All responses, including those which propose an alternative to the Government's preferred options, will be given due consideration.

SUMMARY OF CONSULTATION QUESTIONS

1. Do you agree that the sectors listed in Chapter 4 are sectors where the risk to workers of exploitation is low and can safely be excluded from the scope of GLA licensing?
2. Are there other sectors with a low risk of worker exploitation that you think should be excluded from the scope of GLA licensing? What is the evidence for this?
3. Do you agree that the size and the system for GLA Board appointments should be amended to bring them more into line with best practice in other similar bodies?
4. What mechanisms would you favour to ensure that a smaller GLA Board had access to and took account of a wide range of stakeholder knowledge and viewpoints?
5. Do you agree or disagree that the GLA should have access to Enforcement Undertaking civil sanction in addition to their current powers to address breaches of the law? What is the evidence to support your answer?
6. If you agree, do you have a view on how the GLA might implement an Enforcement Undertaking civil sanction?

Written Ministerial Statement to Parliament 24 May 2012

Gangmasters Licensing Authority (Red Tape Challenge)

The Minister of State, Department for Environment, Food and Rural Affairs (Mr James Paice): The Gangmasters Licensing Authority (GLA) has been considered under the employment theme of the Government's red tape challenge. Last December, we announced that the red tape challenge ministerial star chamber had endorsed the need for the GLA to continue to enforce protection for vulnerable workers, while requiring it to look at reducing burdens on compliant operators. The GLA has been further considered within the red tape challenge and I am today announcing the outcome of that process.

The GLA has done a great deal of valuable work since it was formally constituted on 1 April 2005 with cross-party support. Seven years on, it is a good time to see where improvements can be made so that the authority can become more focused on the worst excesses in the areas it regulates and work more closely with other agencies that tackle crime. I therefore propose to bring forward measures, including where necessary legislation, subject to public consultation, which will:

Ensure GLA targets suspected serious and organised crime by working more closely with the Serious Organised Crime Authority and other specialist law enforcement agencies;

Ensure that evidence of worker exploitation by unlicensed gangmasters or licence holders will contribute effectively to continued successful investigation and prosecution of organised crime groups and assist in the earlier identification of the victims of human trafficking;

Reduce the burden on compliant labour providers and labour users and focus forensically on gross abuse of workers by unscrupulous gangmasters—whose crimes include tax evasion, trafficking, health and safety negligence and other serious crimes;

Streamline the process for issuing licences and remove the general requirement for an application inspection and associated fee, aim to reduce fees and charges and extend the licensing period from twelve months to two years or more for highly compliant businesses;

Remove from scope of the GLA, activities or sectors which are low risk, including:

apprenticeships;

forestry;

cleaning contractors;

land agents; and

voluntary workers.

Provide for those with exclusive rights to use the seashore for shellfish cultivation to be able use their workers to grade and gather shellfish stock without needing to be licensed as a gangmaster. This measure would leave fully in scope of the Act activities such as the gathering of cockles from public shellfish beds;

Introduce administrative fines and penalties for low-level and technical minor offences, including a measure similar to a repayment order to achieve rapid reimbursement to an exploited worker of wages or other payment which has been removed;

Adopt an approach in respect of a labour user who uses an unlicensed gangmaster proportionate to the circumstances of the offence, for example the financial advantage gained and whether or not there has been abuse of the workers; and

Amend the structure of the board of the GLA and introduce a smaller board to provide clear strategic leadership and direction to the GLA.

These changes will free up resources within the GLA to provide for greater effort to be focused on identifying and eliminating criminality in those sectors and activities covered by the authority, such as food processing, where exploitation of the most vulnerable workers is known to exist. In addition it will remove an estimated 150 current licence holders from the scope of the GLA, saving around £60,000 a year, and potentially reduce annual inspection charges from £300,000 a year to zero.