

Title: Changes to the scope and governance of the Gangmasters Licensing Authority IA No: DEFRA1472 Lead department or agency: Department for Environment Food and Rural Affairs Other departments or agencies: Gangmasters Licensing Authority	Impact Assessment (IA)				
	Date: 30/07/2012				
	Stage: Consultation				
	Source of intervention: Domestic				
	Type of measure: Secondary legislation				
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Summary: Intervention and Options	RPC Opinion: Awaiting Scrutiny
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Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
£ 0.31m ¹	£ 2.03m	£ -0.21m	Yes OUT

What is the problem under consideration? Why is government intervention necessary?

- Experience of operating the Gangmasters licensing scheme has shown that some activities subject to licensing pose little risk of worker exploitation.
- The GLA Board is too large and its composition too heavily prescribed to provide the body with effective leadership.
- The sanctions available to the GLA do not make effective tools to discourage those wishing to evade licensing.

Intervention is required as the scope of licensing, the structure of the GLA Board and the sanctions available to the GLA are all set out in legislation.

What are the policy objectives and the intended effects?

- Remove low risk activities from the scope of gangmaster licensing will reduce burdens on businesses supplying workers to those areas and free GLA resources to tackle major non-compliance and criminality
- Reducing the size of the GLA Board in line with other Government bodies and changing the rules for appointments will improve the efficiency of decision making and widen the diversity of the Board.
- Widening the array of sanctions available to the GLA will allow it to deal with licence evasion more effectively.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

This area is already subject to regulation: the proposals seek to reduce the burden imposed on business, streamline the GLA Board and widen the pool of candidates from which the Secretary of State can choose Board members, and strengthen Authority's enforcement capabilities.

0. Do nothing (all businesses currently covered by gangmaster licensing continue to require a licence regardless of risk to workers, GLA Board remains current structure and potential candidates limited to set range of stakeholder representatives)

1.(i) Exempt low risk activities from the scope of gangmaster licensing and,
(ii) Review the structure of the GLA Board and,
(iii) Explore alternatives to prosecution for businesses found evading the GLA licensing scheme.

The Government's preferred option is Option 1 as this meets the policy objectives set out above.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** Triennial 2014

Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro Yes	< 20 Yes	Small Yes	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: N/A		Non-traded: N/A

¹ Not the sum of individual components which may have been rounded up.

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Chief Economist sign-off statement:

The Deputy Director responsible for evidence and analysis for Food and Sustainable Economy has reviewed consultation-stage Impact Assessment (IA) of changes to the scope and governance of the Gangmasters Licensing Authority (GLA). The options proposed are: (i) removing low risk activities from the scope of the GLA (option 1i), (ii) reducing the size of the GLA (option 1ii) and (iii) widening the array of sanctions available to the GLA (option 1iii).

She notes that option 1i is likely to produce a small net benefit for the economy – reducing burdens on business (administrative costs) without significantly increasing the risk to labour. She suggests the consultation period be used to sense-check and systematically assess the list of sectors currently identified as low risk (including whether the list is comprehensive, i.e., whether there are other low risk sectors which could be made exempt). She also suggests using the consultation period to develop alternative models for GLA structures (option 1ii), including an assessment of their pros and cons. Finally, she suggests a quantified analysis for the final stage IA of the likely benefits of moving to a mix of criminal and civil sanctions (for example, in terms of better enforcement and a greater deterrent effect).

She notes that the change proposed in option 1i will mean reduced need for licensing and enforcement action on the part of GLA. In turn, this could mean a reduction in GLA grant-in-aid or a re-prioritisation of spend within GLA to high-risk activities. The latter would require evidence of an enforcement gap, i.e., the re-prioritisation would lead to a demonstrable reduction in the risk to labour working in these sectors.

Overall, subject to the caveats above, she approves the approach taken to the costs benefit analysis, and believes that the Impact Assessment represents a reasonable view of the likely costs, benefits and impacts of the proposed options.

Summary: Analysis & Evidence

Policy Options1

Description:

FULL ECONOMIC ASSESSMENT

Price Base Year 2013	PV Base Year 2013	Time Period Years 10	Net Benefit (Present Value (PV))		
			Low: Optional	High: Optional	Best Estimate: £0.31m

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	£0.21m	£0.20m	£1.92m

Description and scale of key monetised costs by 'main affected groups'

Option 1(i)

Gangmasters: Familiarization Cost: one-off: £209,468 (PV) (EAC £24,335).

GLA: Familiarisation and drafting cost: £1,370 (PV) (EAC £159)

Exchequer: Loss of fees from inspection applications and licence applications: £1,710,778 (PV) (EAC £198,750)

Other key non-monetised costs by 'main affected groups'

Option 1 (i): No costs

Option 1 (ii): a) No cost to business. b) GLA's costs of maintaining a board are small and any changes to the structure of board are expected to be met within the GLA's existing budget.

Option 1 (iii): No costs to either of GLA or businesses.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. time savings) (Constant	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	£0.13m	£0.20m	£2.24m

Description and scale of key monetised benefits by 'main affected groups'

Option 1(i)

Gangmasters a) Fees for inspection and licence application saved £1,710,778 (PV) (EAC £198,750). b) Time saved on filling applications and assisting inspection £524,518 (PV) (EAC £60,936).

Other key non-monetised benefits by 'main affected groups'

Option 1(i):

Gangmasters are likely to benefit from a level playing field due to greater compliance resulting from enforcement activities focusing on the high risk sectors. **GLA** will be able to redeploy freed resources to high risk sectors.

Option 1(ii) GLA will benefit from a more streamlined administration as well as better leadership.

Option 1(iii) **Gangmasters** will benefit from a level playing field. **GLA** will be able to enforce the law better due to flexibility warranted by the Civil sanctions.

Key assumptions/sensitivities/risks

Discount rate (%)

3.5%

i) A major assumption is that the low risk sectors have been largely compliant. In the specific case of Forestry risk associated with this assumption is mitigated by holding the right to re-subject Forestry to GLA if it is needed.

ii) Another assumption is that labour market conditions within these areas will remain constant and that there is no evidence that criminal gangmasters were active in these sectors prior to the introduction of licensing, and therefore, they will not move into them once the low risk sectors are no longer subject to licensing.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: £0.02m	Benefits: £0.26m	Net Costs: -£0.24m	Yes	OUT

Evidence Base (for summary sheets)

1. GLA Background and Rationale for Intervention

- 1.1 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.
- 1.2 The 2004 Act was introduced into Parliament as a Private Member's Bill to tackle workers¹ exploitation in the agricultural sector as a result of cross-party support and industry stakeholder concerns, including retailers and Trades Unions. The Bill was adopted as a further protection by the Government in the wake of the death of 23 cockle pickers in Morecambe Bay in February 2004. Government support for the Bill was a response to heightened awareness and public outcry generated by significant media attention. The Bill aimed to protect the most vulnerable workers employed in the regulated sectors by ensuring those engaged in the supply of workers, or who use workers to provide a service, meet minimum employment and other standards.
- 1.3 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. Exemptions to the licensing scheme are detailed in the Gangmasters Licensing (Exclusions) Regulations 2010 (the "2010 Regulations"). These set out activities for which workers may be supplied without a gangmasters licence because they are considered to pose a low risk of exploitation.
- 1.4 Compliance with the legislation is assessed using information held by Government Departments (e.g. UK Borders Agency, HM 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. The 2004 Act created four offences arising from the licensing scheme: operating as an unlicensed gangmaster, entering into arrangements with an unlicensed gangmaster, obstructing GLA officers and having false documentation. Enforcement is carried out on behalf of the Secretary of State by the GLA.
- 1.5 The Gangmasters Licensing Authority (GLA) was considered under the employment theme of the Government's Red Tape Challenge and in December 2011 it was 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 and to see where improvements can be made so that the authority can become more focused on the worst excesses including tax evasion, trafficking, health and safety negligence and other serious crimes in the areas it regulates and work more closely with other agencies that tackle crime.

¹ Up to date estimates of the number of workers does not exist. We have assumed that there is between 400,000 – 600,000 workers.

2. Problem Under Consideration

I. GLA Scope and Experience

- 2.1 Gangmaster licences are valid for a year. New applicants must pay for the license and an application inspection carried out by the GLA. Provided there is no lapse between the renewal of the licence and its expiry, the businesses do not have to pay for an inspection. 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.
- 2.2 The 2004 Act set out broadly the areas to which licensing applies as: agricultural work, gathering shellfish, and processing or packaging any produce derived from agricultural work, or shellfish, fish or products derived from shellfish or fish.
- 2.3 Following consultation 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 Exclusion Regulations removed from the scope of licensing, amongst other things, the supply of a worker to process or pack produce if the worker is supplied to a catering establishment, a shop or other retail establishment, a wholesale market or establishment or a distribution warehouse. Other exclusions included the supply of a worker for agricultural work by a person to provide a service to a farmer where the service involves the use of machinery owned or hired by that person; and the worker is employed by him to operate or to support the operation of that machinery.
- 2.4 Under current proposals 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, but certain low-risk areas will 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.
- 2.5 Since the 2008 review of the operation of the 2004 Act, 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 etc. For example, it has been observed that of more than 169 cases of violation and consequent revocation reported to GLA since 2006, only one case corresponded to the low risk sectors (see list of low risk sectors in 'Options' section below). In total there has been one case of revocation and two refused licences in these sectors - all of these belonged to forestry sector. Regulating such businesses imposes disproportionate financial and administrative burdens and diverts GLA resources away from higher risk businesses.
- 2.6 The GLA publishes its licensing standards, which are reviewed from time to time, that set out the conditions that you must meet to get a GLA license. The standards are all legal requirements to protect workers from poor treatment and exploitation. Every new business applying for a licence is subjected to an inspection to verify that it meets these requirements and is refused a licence if it fails to meet them or in due course it is found

that it no longer meets them². They cover issues such as working hours, training, terms and conditions, the national minimum wage and transport to ensure labour providers meet the basic safety and welfare standards.

2.7 There are also conditions attached to the licence holder and Principal Authority to check they are ‘fit and proper’ to hold a licence³. A licence is revoked if the authority finds out that any licence holder no longer meets these conditions, following which in order to continue business as usual, the business must return to compliance and apply for an inspection as well as a licence.

2.8 There are 8 standards covering the following subject areas:

- fit and proper test;
- pay and tax matters;
- prevention of forced labour and mistreatment of workers;
- accommodation;
- working conditions;
- health and safety;
- recruiting workers and contractual arrangements; and
- sub-contracting and using other labour providers.

There is no charge for a business to appeal a decision by the GLA to revoke a licence and most businesses lodge an appeal. The GLA wins the overwhelming majority of appeals.

2.9 Following a review of the operation of the GLA licensing scheme undertaken as part of the Red Tape Challenge during the autumn of 2011, it was concluded that the scope of GLA should be revised to exclude the mostly compliant low risk sectors. Changes to the scope of the licensing scheme may be made via a negative Statutory Instrument.

II. GLA Board Structure and Performance

2.10 Under the terms of the Gangmasters (Licensing Authority) Regulations 2005, (the “2005 Regulations”) the GLA Board has 29 members, made up of the Chair, 19 representative members 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.

2.11 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

² The current fee structure is set out in the table below:

Annual Turnover	Fee Band	Application or renewal fee	Inspection Fee
£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

³ <http://gla.defra.gov.uk/Guidance/Information-on-Licensing/Licensing-Standards/>

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 SI.

- 2.12 The public consultation will invite views on alternative models. 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.
- 2.13 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.

III. Legal provisions for enforcement

- 2.14 The 2004 Act makes provision for prosecuting gangmasters who operate without a licence and labour users who enter into arrangements with an unlicensed gangmasters for the supply of labour. 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 gangmasters is liable to a maximum penalty of one year in prison or a fine. However, experience to date indicates that the Courts are reluctant to impose anything other than token penalties for these offences. This has the effect of undermining the “level playing field” based on best practice which the GLA licence was intended to provide, by permitting unlicensed gangmasters to undercut legitimate labour providers.
- 2.15 These provisions are part of the criminal legislation for GLA’s enforcement purposes therefore require prosecution in court. Incorporating civil sanctions in addition to criminal legislation is more likely to meet the above aims and it will increase the credibility of the threat. Criminal sanctions should ideally be reserved only for offences involving violence, human trafficking or other very serious crimes.

3 Rationale for intervention

- 3.1 Government intervention is required in order to make changes to the current regulations covering the GLA, in order to reduce unnecessary burden on the business. The changes will be set against a background of tight public finances. Overall funding for the GLA in 2012/13, comprising grant in aid for licensing regime and enforcement, stands at £4

million and is set to fall to £3.9million in the final year of the SR Period⁴. Further budgetary constraints in coming years are likely as pressure on public finances continue.

- 3.2 The proposed changes to GLA operations will enable less resource to go towards licensing, inspection and compliance activity in low risk areas and highly-compliant businesses and allow that resource to be re-deployed to tackle the more serious and harmful abuses such as tax evasion, trafficking, health and safety negligence.

4 Policy objective

This policy has three clear objectives:

- (i) to relieve businesses, which supply workers in sectors where there is little evidence of the risk of exploitation, from the burden of GLA licensing; providing more clarity within the regulations as regards the sectors where a licence is needed, and; ensuring that workers at risk continue to be protected;
- (ii) streamline the GLA Board to provide a more robust leadership that is better qualified to direct the Authority in its role as a compliance and enforcement body; and
- (iii) enable GLA to improve enforcement by incorporating civil sanction as an alternative to prosecution in order to address criminal behaviour and in a more nuanced way.

5. Description of options considered (including do nothing)

5.1 Baseline

This is the “do nothing” baseline (all businesses currently covered by gangmasters licensing continue to require a licence regardless of risk to workers; the GLA Board retains its current structure and potential candidates remain limited to a set range of stakeholder representatives; the GLA’s range of possible sanctions for those who flout the law, remains unchanged) against which the preferred option is evaluated. Costs and benefits are not measured for this option as it is the reference option. This option would clearly not deliver the government’s objective of focusing the licensing scheme on providing protection to the most vulnerable workers and strengthening the leadership offered by the GLA Board.

5.2 Option 1 (i)

Exempt low risk activities from the scope of Gangmasters licensing and add further clarity to the 2010 Regulations. This option would deliver the government’s objective focusing the GLA’s activities on protecting the most vulnerable workers and making it easier to determine which activities are subject to licensing.

The supply of workers in some low risk activities has been excluded from licensing via regulations in 2006 and again in 2010. However, it is acknowledged that the legislation may still apply in circumstances where there is little evidence of genuine risk to workers (e.g. volunteers), and those exclusions could be widened. The largest number of businesses that will be excluded from the scope of licensing under these proposals are in the forestry sector. This sector has been used by the GLA to pilot a “lighter touch” licensing regime in which businesses must demonstrate earned recognition against a

⁴ The grant in aid is independent of fee payments for licenses and inspections.

number of criteria in exchange for a less intrusive application process. In spite of a less onerous application process the forestry sector has demonstrated a high level of compliance with the GLA Licensing Standards (only 2 licences have been revoked in this sector) so is considered by the Authority to represent a low risk of exploitation. The remaining businesses falling into the sectors suggested for exclusion represents 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 licensing represents an unwelcome financial and administrative burden.

Exclusions from licensing under consideration include:

- **Apprenticeships** - The supply of apprentices by organisations operating Apprentice Training Agency type recruitment and employment models.
- **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. The exemption would include fencing operators.
- **Land Agents** – Any professional agent engaged 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.

5.3 Option 1 (ii)

Review the structure of the GLA Board with a view to reducing its size and widening the pool of candidates. The new structure of the board and any supporting stakeholder group will be defined over the course of the consultation period and in discussions with the GLA and Cabinet Office.

5.4 Under the new arrangements an executive Board with relevant skills to provide strategic leadership and direction to the GLA would be complemented by a separate Council for

appointed sector representatives with a span similar to the existing GLA Board. The Council for representative would be chaired by the GLA Chair. The purpose of the Council would be to advise the board on stakeholder views. (Appointments would continue to be ministerial appointments made in line with the Code of Practice of the Commissioner for Public Appointments).

5.5 The GLA Board has 29 members, made up of the Chair, 19 representative members and 9 ex officio members from Government departments. A move to best practice for arms length bodies would introduce 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. As noted in the discussion of the rationale for intervention, these changes would require amendment to secondary legislation.

5.6 Option 1 (iii)

Make available to the GLA civil sanctions in addition to current criminal provisions for businesses found evading the licensing scheme while maintaining the right of revocation for those failing to comply with the scheme. This option would provide the GLA with a wider range of options when dealing with businesses that have, for instance, failed to obtain a licence prior to commencing operation in the regulated sectors. The regulatory regime comprising the proposed mix will distinguish between unlicensed activity where unaccompanied by serious crimes or exploitation of workers, probably attributable to factors such as operators being unaware of the licensing scheme (or they may have incorrectly concluded they do not need a licence after studying the relevant regulations) and those deliberately evading a licence in order to mask wider non-compliance with workplace regulations and worker abuse. At present, the distinction is absent in terms of penalties and the only sanction the GLA has to address failure to hold a licence in all these circumstances is criminal prosecution.

5.7 The impact on gangmaster and labour users is confined to the costs of familiarisation with the new system, unless they have significantly failed to comply with the law. Most of the costs will fall on the least compliant. The more proportionate and effective sanctions regime will be better at levelling the playing field for compliant gangmaster and labour users. The reputational impact of a civil sanction when things go wrong will be less than the stigma of a criminal conviction, and will help businesses with a good general approach to compliance to more quickly rebuild their reputation. Fewer violations should reduce the burden on the public sector with fewer cases to go before a court.

5.8 The criminal offences (Sections 125, 136 and 187 of the 2004 Act) will remain criminal offences but the tools to deal with them will be extended to provide a more flexible and proportionate approach. Option 3 will give the GLA the flexibility to prosecute when it is clear to them that it is appropriate to do so i.e. all Section 18 offences but not all Section 12 and 13 offences. The GLA would have recourse to criminal or civil remedies and would decide when to use them – e.g. where it was identified that the offence included aggravating factors indicative of exploitation, or which meet the test for the forced labour or trafficking offences.

⁵ Offences: acting as a gangmaster, being in possession of false documents etc.

⁶ Offences: entering into arrangements with gangmasters.

⁷ Obstruction of officers.

6 Costs and benefits for each option (including administrative burden)

Affected parties:

- gangmasters – approximately 1250 business apply for a licence each year covering sectors from food processing to forestry. Of these, 15% are new businesses applying for the first time. Approximately 90% of GLA licence holders are small and medium sized enterprises. Labour users will also need to be aware of the changes to the regulations;
- the GLA;
- the exchequer – provides a grant in aid to the GLA for its operations; and
- gang-labour currently employed in sectors which will now be exempt.

Option 1(i): Exempt low risk activities from the scope of Gangmasters licensing and add further clarity to the 2010 Regulations.

Costs

Gangmasters

6.1 Familiarisation costs to the gangmasters:

There are approximately 1,250 GLA licence holder and a further 7,000 labour users who will need to be aware of the changes to the regulations and familiarise themselves with the new regulations. Approximately 8,250 businesses will need to spend 1 hour reading revised guidance (and disseminating the revisions) therefore the one-off cost to business at £25 per hour wages will be around £210,000 present value (PV).

GLA

6.2 Familiarisation costs to the GLA

56 of the GLA's compliment of 65 staff would need to familiarise themselves with the changes in the regulations, spending 1 hour reading and disseminating the revised guidance. Assuming an average rate of pay of £20 per hour the financial cost to the GLA would be £1120. New guidance setting out the changes in the regulations would take 10 hours to draft at a rate of pay of approximately £25 per hour. The cost to the GLA would £250. Therefore the total one-off familiarisation cost to the GLA would be around £1,400 (PV).

Government

6.3 Inspection and licensing fees lost to the Government

- The GLA estimate that the changes to the scope of licensing will reduce the total number of Gangmasters licenses by approximately 150. However, the 150 reduction do not necessarily constitute the same businesses – businesses currently exit and enter the licensing regime within the relatively stable overall number. The GLA estimates that around 75 new applications are received in the low risk sectors every year. If we assume that the numbers of businesses in low risk sectors are relatively stable (as with overall GLA licensees), then there must also be approximately 75

businesses from low-risk sectors exiting the regime. We assume this is the case in the calculations below.

- All of the excluded businesses (150) would have been liable for the lowest licence fee Band D⁸ of £400 (most of the businesses in the GLA falling under the low risk sectors are also the small and low turnover businesses hence the lowest licence fee band)⁹. Out of these 150, only 75 would have carried on to the following year and applied for renewal fees. This represents a total loss of revenue to the GLA of £30,000 per annum (around £260,000 in PV terms).
- The GLA further estimates that approximately 75 new applications are received every year from these low risk sectors. This proposal would result in 75 fewer licence and inspection applications each year and a further loss of revenue of $((£1,850^{10} + £400) \times 75 =) £168,750$ per annum (around £1.5 million in PV terms).
- The total loss of revenue to the Government arising from the proposed change in the scope of licensing would be around £200,000 per annum (around £1.7 million in PV terms).

Gang-Labour

6.5 Costs to Gang-Labour

- Employees in the sectors as set out in paragraph 5 Option 1, provided by gangmasters will no longer have the additional protection of the GLA. However, the area was already regulated under Statutory employment protection for workers in all sectors of the economy as set out in the National Minimum Wage Act 1998 and the Working Time Regulations 1998, so they will only lose the extra protection offered by GLA, which is of negligible value in any case since they are employed in low risk sectors. Therefore, it is assumed there will be no cost to them from the changes.

Benefits

Gangmasters

6.6 Licensing and Inspection fees savings to Gangmasters

- The benefits to the Gangmasters from the proposed changes will be a mirror reflection of the costs to the GLA in the form of inspection and licence fees lost due to a smaller scope of GLA. 75 businesses will save £ 30,000 as they will no longer be required to continue to renew/apply for licence and 75 prospective new applicants of the licence and inspection will save the inspection fees, which amount to £400 and £1,850 respectively.

The net savings to the business will be around £200,000 per annum (equivalent to £1.7 million NPV).

6.7 Time Savings to Gangmasters

⁸ Annual turnover of less than £1 million.

⁹ The fee charged for a GLA licence is divided into four bands based on the businesses turnover in the regulated sectors. The number of licenses (including current applications) in each band (as at January 2013) is: Band A (23), Band B (24), Band C (164) and Band D (1,009).

¹⁰ The figure reflects the cost that first time applicants are required to pay for an inspection. Costs vary according to annual turnover. Please refer to footnote 2 for fee structure.

- In terms of time savings to the gang-masters, it takes 2 hours to complete a GLA licence application (75) and renewal (75) form, giving a time saving to business of $150 \times 2\text{hrs} = 300$ hours and a cost saving of $(£300 \times £25)$ of around £7,600 per annum.
- An application inspection, which currently must be carried out when a gangmaster applies for a licence for the first time, can take up to 28 hours of the applicant's staff time. The reduction of 75 new applications each year will result in a time saving to business of 75×28 hours = 2,100 hours. This represents a financial saving of approximately $(2,100 \times £25.39=)$ £53,300 per annum.

Therefore the total business time saving in a year to the Gangmasters operating in these sectors is around £61,000 per annum (equivalent to £525,000 NPV).

GLA

6.8 Other (non-monetised) benefits

- GLA will redeploy its now freed internal resources to focus on investigating the activities of those operators which avoid licensing and are involved in serious abuse of labour, rather than wasting resources investigating low risk sectors. This implies benefits in terms of increased compliance as more time can now be devoted to enforcement activities in higher risk sectors. These are non-monetised at the current stage and are assumed to roughly off-set the costs arising from maintaining the same resources as before exclusion of low risk sectors.

Table 1, overleaf, summarises the costs and benefits of option 1(i).

Table 1: Summary of total costs and benefits - option 1 (nearest '000)

	Year 0	Year 9		Total cost/benefit	Annual Cost or Benefits/EA	PV
COSTS						
Gangmasters						
Familiarisation (transition)	209,000	0	...	209,000	£24,000	209,000
Total Industry Costs	209,000	0	...	209,000	£24,000	209,000
			...			
GLA						
Familiarisation (transition)	1100	0	...	1100	£130	1100
Licence fees lost	60000	60000	...	600000	£60,000	52,0002
Inspection Fees Lost	139,000	139,000	...	139,000	£139,000	1,194,000
Drafting new regulation (transition)	250	0	...	250	£29	250
Total Costs to GLA	200,000	199,000	...	199,000	£199,000	1,712,000
TOTAL COSTS	410,000	199,000	...	2,198,000	£223,000	1,922,000
BENEFITS						
Gangmasters						
Business savings from fewer Licence/renewal fees	60000	60000	...	210000	£60,000	52,000
Savings from fewer inspection application fees	139,000	139,000	...	139,000	£139,000	1,194,000
Time savings for Business on Application filling	7600	7600	...	76,000	£7,600	66,000
Time savings for Business on Inspection	53,000	53,000	...	62,000	£53,000	459,000
Total Benefits to the business	260,000	260,000	...	1,736,000	£256,000	2,235,000
			...			
			...			
TOTAL BENEFITS	260,000	260,000	...	1,736,000	£260,000	2,236,000
NET BENEFIT						
Total Net (Benefit)	-150,000	61,000	...	-462,000	£36,000	314,000
Total Net Business (Benefit)	50,000	260,000	...	1,526,000	£235,000	2,026,000

Option 1 (ii) Review the structure of the GLA Board with a view to reducing its size and widening the pool of candidates.

6.9 Proposals for a new governance structure for the GLA are still under discussion but 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.

Cost

6.10 This option proposes to reduce the size of the board therefore there are no direct cost to any stakeholder. The costs of maintaining the board are negligible in any case as the board members are paid only the reimbursement for their travel fare.

Benefits

6.11 This option would deliver a GLA Board which is better equipped to drive policy and provide a strategic lead for the Authority's operations. The economic impact of changes proposed to the GLA board is uncertain at this stage as the new structure of the board and any supporting stakeholder group will be defined over the course of the consultation period and in discussions with the GLA and Cabinet Office. The proposed changes aim to reduce the board size which has very small implication in terms of cost reduction as the board members may charge the GLA only travel expenses for the four meetings held over a year. Therefore, the financial impact of this measure on the public, businesses and the wider public sector is likely to be negligible. We anticipate that the cost of maintaining the new Board structure would be met from within existing GLA budgets.

Option 1 (iii): Explore alternatives to prosecution and license revocations for businesses found evading the licensing scheme and failing to maintain compliance with the scheme.

6.12 The use of civil sanctions will lead to some direct costs and benefits. The additional impact of using the civil sanctions relative to criminal sanctions will depend in any individual case on what would otherwise have been used (criminal sanction or no sanctions at all). The overall impact of introducing these sanctions also clearly depends on how often and how appropriately they are used. Effective civil sanctions should strengthen incentives to comply and lead to more effective enforcement.

6.13 The direct effects are likely to comprise of:

- *costs and cost savings to the GLA*. This will depend on the number of cases and unit cost likely to be incurred using the existing enforcement mechanisms and the estimated cost of using civil (as well as criminal) sanctions;
- *costs and cost savings to gangmasters and labour users*. This consists of administrative costs of co-operating with sanctions and taking any measures required by the sanctions, relative to the current situation.;

- costs to tribunal and courts. The costs to HM Courts and Tribunal Service may increase or decrease depending on the cost of administrating any appeals relative to the reduction in caseload due to fewer prosecutions; and
- benefits to labourers. These will depend on the improvement in compliance that results from the more effective sanctions regime.

6.14 There are some indirect effects of adding civil sanctions to criminals actions. These are expected to be:

- *an improved working environment* for businesses who supply workers (labour providers, gangmasters and agencies) and businesses who need workers (labour users, farmers and packhouses) that meets the employment standard that are required by law; and
- *a more level playing field as a result.* Improved enforcement is likely to benefit those businesses who typically comply with regulations. This is because companies that do not meet the standard of the law are more likely to have had reduced costs as a result of not complying with Gangmasters (Licensing) Act and may have been able to achieve greater market share from being able to charge lower prices. To the extent that costs are increased as a result of these proposals either directly or from moving to greater compliance, the relevant businesses will either have reduced profits and/or pass costs on and may lose business as a result. This and the fact that, in some cases, offenders may move out of illegal activities (e.g. operating as a gangmaster without a licence and using an unlicensed gangmaster) will make more market share available for companies that comply with regulations.

Costs and Benefits

Gangmasters

6.15 While a monetary value cannot be attached to the benefits to business it is likely that businesses will enjoy an improved enforcement environment that creates a level playing field at no extra cost.

GLA

Costs

6.16 There could be a small incremental cost of familiarisation with the new regulatory regime, however this is likely to be minimal and will depend on the detailed proposal.

Benefits

6.17 Providing a range of civil sanctions to deal with technical breaches of the law would equip the GLA to enforce compliance with the 2004 Act in most cases without recourse to the Courts and without causing unnecessary disruption to business. It is expected that for the following reasons a civil sanctions regime will result in higher level of compliance: more clarity on potential sanctions and a credible threat of applying them due to proportionate and just penalties.

6.18 The current legislative structure available to the GLA is incapable of addressing technical breaches of the law in an appropriate and proportionate manner and is therefore inefficient. For example, businesses that are either unaware of the licensing scheme or misinterpreted the scheme to believe that they do not require a licence would be easily brought to compliance by use of improvement notices and stop notices, once these tools

are made available as a result of enabling civil sanctions. The GLA's and legal system's resources that are needlessly utilised in the process of criminal court proceedings will be conserved by introducing a system similar to compliance notices preceding any decision to revoke.

Preferred option – Options 1 (i), (ii) and (iii) - Combined, these options would deliver the government's aims of easing burdens on business by focusing the GLA's activities on areas where there is known to be a risk of worker exploitation, a range of sanctions to deal with criminality more suited to the GLA's needs, and a reformed GLA Board.

6.19 **Summary of preferred option along with description of implementation plan**

The preferred option is Option 1 (i), (ii) and (iii) Combined: removing low risk activities from the scope of the GLA licensing scheme, widening the range of sanctions available to the GLA and changing the governance arrangements for the GLA Board

6.20 The removal of low risk activities from the scope of GLA licensing will be achieved by amending the Gangmasters Licensing (Exclusions) Regulations 2010. Our plan would be to introduce the changes by negative Statutory Instrument laid before Parliament in June 2013.

6.21 The changes to the GLA's governance arrangements would require an amendment to the Gangmasters (Licensing Authority) Regulations 2005. We would introduce the changes by affirmative Statutory Instrument laid before Parliament in June 2013.

6.22 The introduction of the power to impose civil penalties might be achieved by order under the Regulatory Enforcement Sanctions Act 2008.

6.23 **Administrative Burdens**

In the wake of the proposed changes two changes will appear in pure administrative burden (time costs) on businesses. While cost of familiarisation to the new regulation (EAC £ £24,300) adds to the burden on the business it will be more than set off by the recurring benefit of time saved on filling applications for licence or inspection in the low risk sectors or assisting the GLA during inspections (EAC £60,900). In effect the administrative burden is likely to reduce by £36,500 EAC.

7 **Rationale and evidence that justify the level of analysis used in the IA (proportionality approach)**

7.1 The experience of the GLA operations so far has led to the formulation of the proposed changes. This Impact Assessment represents a reasonable approach to estimating the impacts of revising the regulations governing the GLA. Wherever possible, monetised costs and benefits have been estimated. It is not possible to make quantified estimates of the impact of options 1(ii) and (iii)– the precise changes to the GLA board are not yet known, and it is difficult to estimate the impacts of changes in the sanctions regime.

7.2 Evidence on the financial impact of the proposed change to the scope of the scheme to business is based on publicly available information about the current cost of obtaining a gangmaster licence and using the Authority's own assessments of the costs associated with its operations.

7.3 We have used the number of businesses that operate under GLA and belong to the low risk sectors to calculate the relevant costs and benefits to GLA in terms of the Licence fees lost once these sectors are removed from the scope of GLA. This figure has been

provided by GLA based on the number of their current licence holders from these sectors and for the purpose of simplicity rounded off to be 150.

- 7.4 It is important to note that because GLA is a non-profit organisation its cost of processing reflects the fees charged for obtaining licences and likewise for the inspection application, there is no net cost of these changes to GLA but only a benefit of businesses in terms of saving these fees. Exclusion of these low risk sectors from the scope of GLA will prove be a good example of meeting the Red Tape Challenge to lift unnecessary burdens on business.
- 7.5 In addition to the current licence holders from the low risk sectors, there will be a positive impact for the prospective gangmasters who wish to operate in these low risk sectors. GLA has assessed that the number of new licence applications received every year is approximately 75 and on the average an equal number of these businesses move out of the regulated sectors per annum. All these prospective businesses will also save time and money from the new regulations that do not require them to apply for licences any longer.
- 7.6 The financial impact of the proposal to change the governance arrangements of the GLA is limited to the Authority itself. No wider impacts are anticipated at this stage.
- 7.7 The introduction of civil sanctions will not incur any costs to businesses or to GLA. However, it is expected that non-quantifiable wider benefits will be achieved in the wake of better enforcement that may result from this change.

8. Risks and assumptions

Risks

The principal risk arising from the proposal to widen the exclusions from the licensing scheme is the discovery of widespread, systematic abuse within one of the areas removed from the scope of the scheme. However, this is unlikely: the areas selected for the relaxation of licensing have been found over several years by the GLA to have a very low risk of worker exploitation, and have demonstrated a strong culture of compliance with wider regulations.

Assumptions

- Labour market conditions within the areas selected for exclusion from licensing will remain constant.
- There is no evidence that criminal gangmasters were active in these sectors prior to the introduction of licensing, and therefore, they will not move into them once they are no longer subject to licensing.
- It is assumed that the number of licensees in GLA would have remained roughly constant in the absence of intervention. We assume that 150 of the current licensees are in low risk sectors, and that this number would have also stayed constant. It is also assumed that the number of businesses that would have entered/exited the low risk sectors would have been approximately 75.

9. Direct costs and benefits to business calculations (following OIOO methodology)

The proposed changes will result in a net saving to business of £0.21m per annum (EANCB 2009 prices). These savings come from the proposed measure to widen the

exclusions to the GLA licensing scheme will result in a net reduction in costs for new businesses in low-risk sectors, and for businesses currently in those sectors which no longer need to obtain a licence every year. .