

**EXPLANATORY MEMORANDUM TO THE
GANGMASTERS LICENSING (EXCLUSIONS) REGULATIONS 2006**

2006 No. 658

1. This explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

- 2.1 The Regulations specify the circumstances where a person acting as a gangmaster as defined by the Gangmasters (Licensing) Act 2004 is not required to obtain a gangmasters' licence.

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

- 3.1 None

4. **Legislative Background**

- 4.1 The Gangmasters Licensing (Exclusions) Regulations are made under Section 6(2) the Gangmasters (Licensing) Act 2004 ("the 2004 Act"). The 2004 Act applies to;

- agricultural work;
- the gathering of shellfish; and
- processing and packaging of any produce derived from agricultural work or shellfish, fish or products derived from shellfish or fish

- 4.2 The primary objective of the 2004 Act is to curb the activities of those gangmasters who exploit their workers and/or act illegally, by introducing licensing of gangmasters operating in agriculture, shellfish gathering and associated processing and packaging activities. The Act provided for the establishment of the Gangmasters Licensing Authority to operate the new licence arrangements. The Authority was set up by the Gangmasters (Licensing Authority) Regulations 2005 on 1 April 2005.

- 4.3 Acting as a gangmaster has deliberately been defined widely in the Act. In general terms a person is acting as a gangmaster if he or she;

- supplies a worker to do work to which the Act applies;
- uses a worker to do work to which the Act applies in connection with

- services provided by him or her to another person; or
- uses a worker to do certain specified types of work (in particular the gathering of shellfish).

4.4 This approach ensures maximum coverage of the legislation and minimises the scope for evasion by gangmasters who might otherwise restructure their businesses in order to avoid the need to obtain a licence. However it is recognised that this approach will include certain circumstances that do not involve the supply of gang labour or where there is no significant risk that gang labour will be exploited. Therefore the 2004 Act gives the Secretary of State the power to make regulations specifying circumstances in which a licence is not required. These regulations will ensure that licensing targets those areas where gang labour is used or where there are known to be cases of exploitation.

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

- The Gangmasters (Appeals) Regulations 2006 (making provision for an appeal against a decision by the Gangmasters Licensing Authority); and
- The Gangmasters (Licensing Conditions) Rules 2006 (made by the Gangmasters Licensing Authority and setting out procedures applicants must follow and the conditions that they must comply with).

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

5. Extent

5.1 This instrument applies to Great Britain

6. European Convention on Human Rights

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

7. Policy background

7.1 The Government supported Jim Sheridan’s Private Member’s Gangmasters (Licensing) Bill, introduced into Parliament in 2003 which was intended to curb the exploitative activities of gangmasters operating in certain areas of the economy. While some gangmasters operating in this area run reputable businesses, it is clear that many operate illegally and exploit their workforce. The Bill attracted cross party support and received Royal Assent on 8 July 2004.

7.2 The Act introduces a licensing scheme for gangmasters supplying labour to agriculture, shellfish and closely related produce packing and processing sectors. The primary objective of this legislation is to tackle illegal

activity and exploitation by gangmasters. Secondary objectives are to reduce exchequer fraud and various other forms of non-compliance, increase exchequer revenues by promoting the employment of legitimate workers and to promote a fair competition between labour providers.

7.3 The Government has consulted twice on the extent to which circumstances representing activity as a gangmaster should be excluded from the requirement to obtain a licence. The first consultation took place between February and May 2005 and sought views on exclusions proposed for all of the areas covered by the Act. The second consultation took place between October and December 2005 and focussed specifically on the food processing and packaging sector.

7.4 On the basis of the outcomes of both consultations the Government is introducing regulations which will exclude from the requirement to obtain a gangmasters licence the range of circumstances described in the Schedule to the Gangmasters Licensing (Exclusions) Regulations.

7.5 Paragraph 1 of the Schedule defines terms used in the rest of the Schedule. Paragraph 2 provides that a licence is not required to supply a worker to process and pack produce to which the Act applies if in a catering establishment, wholesale market, retail or wholesale establishment. Paragraph 3 provides that a licence is not required to supply a worker to pack a product which contains an element derived from agricultural produce, where the end product is not a food product or an agricultural, fish or shellfish product e.g. paint brushes or cosmetics. Paragraphs 4 and 5 provide that a licence is not required to supply or use a worker for agricultural work if the loan is to another farmer for a short period or if the farm is the subject of a share farming agreement. The short term supply of labour where one farmer provides services to another is also allowed under these paragraphs.

7.6 Paragraph 6 provides that a licence is not required if a worker is supplied to operate machinery supplied by an agricultural contractor. Paragraph 7 allows a worker to be moved between sole operators in the Seasonal Agricultural Worker Scheme administered by Work Permits (UK) and other SAWS operators. Paragraph 8 allows a service provider to use a worker to operate machinery owned or hired by the service provider. The service provider would otherwise be acting as a gangmaster under section 4(5) of the 2004 Act. Paragraph 9 allows a worker employed by a service provider to be used in limited circumstances in connection with a food and drink processing and packaging service.

7.7 Paragraph 10 applies if someone uses a worker to harvest crops on land which he has disposed of while retaining title to the crops. Paragraph 11 provides a licence is not required to supply a licensed slaughterman to slaughter animals. Paragraph 12 allows an agricultural student to be supplied to a labour user by the educational establishment to further his education or training. Paragraph 13 allows the supply of a single skilled agricultural worker. Paragraph 14 initially excludes the shellfish gathering industry as further work is necessary by the Gangmasters Licensing Authority to design the licensing arrangements which should apply to this atypical sector. A licence will not be required to gather shellfish before 1 October 2006.

Paragraph 15 makes it clear that after 1st October 2006 the gathering of shellfish will be brought within the scope of the licensing scheme with the exception of workers employed directly to gather shellfish from a fishing vessel and workers employed to gather shellfish by diving.

7.8 The Authority is now ready to invite applications for licences and needs to know which sectors covered by the 2004 Act will not be covered by the licensing arrangements. Therefore these regulations need to come into operation by 6th April 2006 – the date the licensing arrangements come into effect.

7.9 The Gangmasters (Licensing) Act attracted a considerable amount of publicity and there has been a substantial amount of interest expressed by industry stakeholders in the Gangmasters Licensing (Exclusions) Regulations. Comments received in response to the two public consultations touched upon most aspects of the regulations, with particular interest expressed about the extent to which the licensing arrangements should cover the food processing and packaging sector. Most responses to both consultations argued that there should no exclusion from the licensing arrangements for gangmasters who supply workers to undertake food processing and packaging. These regulations have been prepared on this basis.

7.10 Paragraphs 4.4 to 4.16 in the Regulatory Impact Assessment summarise the responses received to the consultation on the draft Regulations. A full summary of responses is provided on Defra's website at <http://defraweb/corporate/consult/gangmaster-exclregstwo/index.htm>.

8. Impact

8.1 A Regulatory Impact Assessment is attached to this memorandum

9. Contact

Geoff Webdale at the Department for Environment, Food and Rural Affairs
Tel: 020 7238 5755 or e-mail: Geoff.R.Webdale@defra.gsi.gov.uk can answer any queries regarding the instrument.

THE GANGMASTERS LICENSING (EXCLUSIONS) REGULATIONS 2006 - FINAL REGULATORY IMPACT ASSESSMENT

1. Executive Summary

1.1 This Regulatory Impact Assessment (RIA) assesses the impact of the draft Gangmasters Licensing (Exclusions) Regulations 2006. These Regulations are being made under sections 1(2)(f) and 6(2) of the Gangmasters (Licensing) Act 2004. The Act introduces licensing for gangmasters (hereafter described as labour providers when not referring directly to the use of the term in the Act) operating in agriculture, shellfish gathering and the associated food processing and packaging sectors. The purpose of licensing is to:

- curb the exploitative and other illegal activities of labour providers
- increase Exchequer revenues by promoting employment of legitimate workers
- promote fair competition amongst labour providers

A separate RIA dealing with the main provisions of the Act has already been published.

1.2 The Gangmasters (Licensing) Act 2004 was drafted in broad terms in order to ensure all labour providers (and in some cases users) can be required to obtain a licence. It is recognised that this approach will include certain circumstances that do not involve the supply of gang labour or where the risk of exploitation of gang labour is minimal. Consequently the Act allows the scope of the licensing arrangements to be narrowed through regulations.

1.3 The Gangmaster Licensing (Exclusions) Regulations have been prepared following two consultation exercises and, specify the circumstances in which a licence under the Gangmasters (Licensing) Act is not required. The Schedule to the Regulations describes the circumstances in which a labour provider does not need a licence. As a result of these regulations a licence will not be needed in relation to the supply of workers to process and package food in retailing and catering outlets and specialist wholesaling and distribution facilities. They also exclude short term loans of workers between farmers, provision of agricultural services by contractors (including the supply of skilled workers by specialist agencies), harvesting retained crops when land has been sold, placement of students by educational establishments as part of a programme of work experience or a sandwich course and the supply of workers within a share farming agreement.

1.4 The development of licensing conditions for farming and food processing activities has been informed by the work of the Temporary Labour Working Group. No such preparatory work had been undertaken in the shellfish gathering sector and, to allow time for the development of specific licence conditions for this sector, the Schedule excludes shellfish gathering from the licensing arrangements until 30 September 2006. From 1 October onwards licensing will apply to the supply and direct employment of workers to gather shellfish from the shoreline.

1.5 The Government has consulted twice on the extent to which the supply of workers to undertake the processing and packaging of agricultural produce, fish, shellfish and related products should be retained within the licensing scheme. These consultation exercises have been supplemented by research into the treatment of workers supplied by labour providers to undertake food processing work. This RIA concludes that a number of day to day arrangements involving the supply of workers by farmers and contractors should be excluded as they do not involve the supply of “gang” labour. Catering and retail establishments will also be excluded but licensing will apply in relation to the supply of labour to undertake any food processing activities. These arrangements will apply from 6 April 2006. Licensing in relation to the supply and use of workers to gather shellfish will be come into effect on 1 October 2006. This approach will reduce the cost to business associated with the introduction of licensing from some £3.7m to £1.7m per annum.

1.6 A post implementation review will be undertaken a year after the introduction of licensing to ensure that the licensing arrangements are following the principals of better regulation.

1.7 Licensing will benefit legitimate labour providers by establishing a properly regulated labour supply market, and by eliminating unfair competition from those who currently operate illegally. There will also be a benefit to Government through improved labour provider compliance with existing legislation.

2. Title of Regulatory Proposal

2.1 The Gangmasters Licensing (Exclusions) Regulations 2006 made under section 6(2) of the Gangmasters (Licensing) Act 2004.

3. Purpose and intended effect of measure

Introduction

3.1 The Gangmasters (Licensing) Act 2004 (“the Act”) received Royal Assent on 8 July 2004. The primary objectives of Act are to:

- curb the exploitative and other illegal activities of labour providers
- increase Exchequer revenues by promoting employment of legitimate workers
- promote fair competition amongst labour providers

3.2 The Act applies to:

- agricultural work,
- gathering shellfish, and
- processing or packaging;-
 - any produce derived from agricultural work, or
 - shellfish, fish or products derived from shellfish or fish.

3.3 A licence will be required by anyone who acts as a gangmaster (hereafter described as labour providers, except where the term is used in reference to provisions of the Act) as defined in the Act. A person acts as a gangmaster if he / she:

- supplies a worker to do work to which the Act applies.
- uses a worker to do work to which this Act applies in connection with services provided to another person.
- uses a worker to harvest and gather agricultural produce following the sale, assignment or lease of produce to that person for the purpose of enabling the harvesting or gathering to take place.
- uses a worker to gather shellfish. This includes the direct employment of workers to undertake shellfish gathering.
- uses a worker to process or pack agricultural produce harvested or gathered following sale, assignment or lease of produce for the purpose of enabling harvesting or gathering to take place.

3.4 The Act establishes the **Gangmasters Licensing Authority (“the Authority”)** to set up and operate the licensing arrangements. The Authority was established on 1 April 2005 when the Gangmasters (Licensing Authority) Regulations 2005, made by the Secretary of State under sections 1(5) and 25(2) of the Act, came into force. Those Regulations make provision as to the status and constitution of the Authority, the appointment of its members, the

payment of remuneration and allowances and other matters connected with the Authority's establishment and operation. Further regulations are also being made establishing an appeals mechanism. The Gangmasters (Licensing) Act 2004 and the [Gangmasters \(Licensing Authority\) Regulations 2005](#) and the Gangmasters (Appeals) Regulations are the subject of separate [Regulatory Impact Assessments](#).

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

3.6 The procedures that will be involved in checking that a labour provider is licensed and the documentary form that the licence will take are matters for the GLA to decide. Once the Authority has decided on its licensing procedures, Defra will make regulations setting out the steps that labour users must follow in order to establish the defence of having undertaken all reasonable care to check that a labour provider is licensed. The cost of taking these steps will be considered in the RIA for those Regulations. It is anticipated that consultation on the Regulations setting out reasonable checks will take place in mid 2006.

3.7 Under sections 1(2)(f) and 6(2) of the Act, the Secretary of State can make regulations specifying additional functions for the Authority and specifying circumstances when a licence is not required.

3.8 Separate regulations will be made in respect of exclusions in Northern Ireland (Section 28 and paragraph 8 of Schedule 2 to the 2004 Act refer). However it is understood that similar arrangements will apply.

3.9 This Regulatory Impact Assessment relates only to the [Gangmasters Licensing \(Exclusions\) Regulations 2006](#) made under sections 1(2)(f) and 6(2) of the Act which will apply in England, Wales and Scotland. It does not consider the impact of other aspects of the labour provider licensing arrangements.

4. The Gangmasters Licensing (Exclusions) Regulations 2006

Background

4.1 The Act was drafted in broad terms in order to ensure all labour providers (and in some cases users) can be required to obtain a licence. It is recognised that this approach will include certain circumstances that do not involve the supply of gang labour or where the risk of exploitation of gang labour is minimal. Consequently the Act allows the scope of the licensing arrangements to be narrowed through the Exclusions Regulations.

Objectives

4.2 The objective of these Regulations is to reduce the regulatory burden imposed by the Act without materially reducing the protection that it affords to exploited workers and to legitimate businesses in the sector. It intends to achieve this by removing from the proposed licensing arrangements those circumstances that do not involve the supply of gang labour or where there is no significant evidence of exploitation of gang labour. As a result of these Regulations certain labour providers supplying labour to specific businesses in the food chain will not be required to obtain a gangmasters licence. This means that certain labour users will not be required to check that their labour providers are licensed.

4.3 To inform the development of these regulations the Government consulted in February and October 2005.

First Consultation

4.4 The draft regulations consulted on in February included proposals for a number of detailed “technical” exclusions from the licensing scheme. These included short term loans of workers between farmers, the use of workers to provide an agricultural service, the supply of workers by agricultural machinery contractors and agencies providing specialist agricultural services, work placements by educational establishments and traditional subcontracting arrangements. Views were also sought on the application of licensing to shellfish gathering including the coverage of family members and the use of workers to gather shellfish from a fishing vessel.

4.5 In general, the responses to the first consultation supported the proposed “technical” exclusions subject to a number detailed changes to clarify and tie down clearly the terms of the exclusions proposed. There was support for the proposed exclusion of people used to gather shellfish from fishing vessels but no support for the proposed family member exclusion on the grounds that this would be difficult to police and enforce.

4.6 Views were also sought on the application of licensing in the food processing sector. The starting point for this was a proposal that processing and packaging done after food enters the retail distribution and catering sectors should be excluded. Four options were proposed for comment in relation to the remainder of the food processing sector as follows:

- Include initial processing and exclude second stage processing
- Include initial and second stage processing
- Include initial processing and exclude second stage processing but direct the GLA to review second stage processing
- Include initial processing and those second stage processing activities where research shows evidence of abuse and illegal activity

Under this approach initial processing would include activities – such as the washing, trimming and cutting of fresh produce – where the basic nature of the raw material is unaltered. Second stage processing takes place after initial processing is complete and involves more intensive processing activities – such as the manufacture of ice cream, ready meals, confectionery – where the basic nature of the raw material is transformed.

4.7 In developing and consulting on these options the Government acknowledged concern expressed by some stakeholders about the exploitation of workers by labour providers operating unlawfully in second stage processing. However it also noted that evidence of exploitation in second stage processing was largely anecdotal or hearsay as no formal survey has been undertaken to establish the extent to which exploitation and illegal activity is taking place. Consultees were therefore asked to provide evidence of serious exploitation in the second stage processing sector. In addition the Government commissioned research which attempted to establish the extent of serious exploitation and illegal activity by labour providers in second stage processing.

4.8 A majority of the responses received to the first consultation argued that labour providers and labour users do not distinguish between initial and second stage processing in the day to day operation of their businesses. The research commissioned by Defra suggested that serious exploitation (as opposed to more minor forms of exploitation) by labour providers is neither endemic nor widespread in the second stage processing sector. However, the research did indicate (results are available on the Defra website www.defra.gov.uk) that some workers were potentially being paid less than the minimum wage due. The Government is aware, as a result of its activity in enforcing existing regulations, that some labour providers operating in the second stage processing sector are non compliant.

4.9 In the light of the research and the views expressed by respondents to the first consultation, the Government considered it appropriate to consult again on options for determining the extent to which the supply of workers to undertake processing and packaging of agricultural produce, fish and shellfish sector should remain within the proposed licensing arrangements.

Second consultation

4.10 The second consultation concentrated on food processing and packaging activities. Again the exclusion of processing and packaging in the retail distribution and catering sectors was assumed as a starting point for this exercise. Four options were proposed for consideration as follows:

- Option 1 – Include initial but exclude second stage processing
- Option 2 – Exclude second stage processing using a refined definition of initial / second stage processing linked to a review of the definition and its impact by the GLA
- Option 3 – Exclude all off farm facilities linked to a review of off farm labour provider activity by the GLA

- Option 4 – No exclusions for processing and packaging of food and fresh agricultural products

Some 58 responses were received and 48 respondents supported Option 4 on the basis that activity by illegal labour providers is endemic in both initial and second stage processing. Of the remaining respondents one supported Option 1, one supported Option 2 while the remaining six did not support any specific options or were commenting on other aspects of the draft regulations.

4.11 Consultees who favoured option 4 (no exclusion for food processing) this approach included the TGWU, GMB, the Association of Labour Providers, British Retail Consortium, National Farmers Union, Waitrose Ltd, Sainsbury, Tesco, Marks and Spencer, Fyffes, Geest, Premier Foods, Food and Drink Federation, Fresh Produce Consortium and members of the Temporary Labour Working Group. They all felt that option 4 would be most effective in tackling the illegal and exploitative activities of gangmasters and in encouraging fair competition amongst labour providers. They also thought that this approach would provide a clearly understood boundary for the licensing scheme, reflected the integrated nature of processing work in the food sector and mirrored the way labour is supplied. There was concern amongst many stakeholders that, if the Government does not adopt option 4, this will be seen as a weakening of the Government's resolve to tackle the gangmaster problem.

4.12 A number of respondents drew support for the option 4 approach from the results of the Temporary Labour Working Group's (TLWG) programme of audits. Under the TLWG audit programme auditors have visited 204 labour providers, pack houses and processing facilities (the majority of which are likely to be excluded if the licensing scheme does not cover second stage processing). Of the 164 audit reports analysed to date, 90% of labour providers have non-compliances against the **GLA draft licensing conditions**. In total 889 non-compliances against the draft licensing conditions have been recorded. These findings included serious and in some cases persistent abuses of basic worker rights. TLWG auditors found 13 instances of bonded labour, 53 instances of breaches of working time regulations, 28 instances of breaches regarding the employment of children and young workers and 28 instances of illegal deductions from pay.

4.13 Worker testimonies submitted by the Transport and General Workers Union and GMB provided specific case studies of exploitation and abuse in second stage processing to support the emerging findings of the TLWG programme of audits. Several respondents also made the point that the incidence of non-compliance is likely to be higher than that revealed so far as the labour providers who had been audited had done so voluntarily and therefore were likely to represent the more respectable end of the spectrum of labour providers. In addition some, noting that the majority of labour providers operate in both initial and second stage processing, argued that there was no logical reason why an illegal labour provider would act any differently in one sector compared with the other.

4.14 The Recruitment & Employment Confederation (REC) favoured excluding food processing activity, suggesting that licensing should be restricted to on farm and shellfish gathering activities. The Confederation of British Industry favoured a selective approach to licensing beyond the farm gate. The REC explained that an analysis of the complaints it had received about the activities of its members showed little evidence of widespread abuse in second stage processing. The analysis also showed no evidence that the level of complaints was rising. The REC also disputed the suggestion that the labour providers audited under the TLWG programme were likely to represent the more respectable end of the labour provider spectrum on the basis that many of its members had not yet submitted themselves for audit as they were awaiting the outcome of this consultation before deciding whether to do so. The CBI also argued that including the whole food processing sector went much further than that envisaged when the Bill passed through Parliament.

4.15 The REC also suggested that the impact of excluding food processing would be more significant than claimed in the second consultation paper which suggested fewer than 30 businesses would be affected by this exclusion. An analysis of membership records undertaken by the REC indicates that some 550 of their members supply labour into the food processing sector and that the majority of these businesses do not supply labour to work on farms. Grossing these figures up (some 67% of labour providers are REC members), this implies some 775 labour providers supply food processing but not farming businesses out of a total labour provider population of some 1000 businesses. Further work to quantify the impact of the exclusions regulations has been undertaken with the TLWG and the Association of Labour Providers. Precise estimates are difficult to establish. However it has been agreed that we should assume that 500 fewer labour providers would need to be licensed if licensing stops at the farm gate compared with the numbers licensed if the whole food processing sector is covered (**see Annex A**).

4.16 Following the second consultation further work has been undertaken to quantify the labour users affected by this legislation (**see Annex B**). This indicates that if licensing stops at the farm gate some 6,950 users will be affected and that if licensing applies to all food processing some 8240 users will be affected. The average cost per labour user is estimated to be just under £50 per annum.

5. Risk assessment

5.1 The Exclusion Regulations seek to minimise regulatory and administrative burdens whilst ensuring the licensing scheme targets those circumstances where there is significant risk of exploitation of gang labour, other forms of illegal activity and unfair competition between labour providers.

5.2 These Regulations seek to ensure the regulatory burden is proportionate to the risk. There is a danger that Exclusions Regulations will create loopholes that unscrupulous labour providers might exploit. To address this risk section 1(2)(c) of the Act imposes a general duty upon the Gangmasters Licensing Authority to keep under review the activities of

persons acting as gangmasters and Regulation 2(2) of these Regulations requires the Authority to recommend to the Secretary of State any modifications to the specified circumstances which may be desirable.

6. Issues of equality and fairness

6.1 In making these regulations it is necessary to ensure that all labour providers are treated fairly. This means that the boundaries between licensed and unlicensed activities need to be clear and easily understood. It is also necessary to ensure that businesses in the same sector are not treated differently for licensing purposes as a result of the Exclusions regulations.

6.2 Information about the total number of businesses which will benefit from the proposed Regulations is not known as we possess only limited data about the number of businesses which use labour providers and the number of labour providers which operate in the sectors covered by the Regulations. Where available, estimates about the numbers of businesses which will benefit from the Regulations is provided below in the section dealing with options.

7. Options

Do Nothing

7.1 We could do nothing i.e. to make no exclusions and to require all labour suppliers / users falling within scope of the definition of a gangmaster in the Act to obtain a licence.

Introduce “Technical” Exclusions only

7.2 This approach would limit exclusions to those activities falling within the scope of the definition of a gangmaster in the Act where the activity does not involve the supply of gang labour or where the supply of labour is incidental to the supply of another service. Under this option the following activities would be excluded:

- Farmer to farmer loan of a worker
- Farmer to farmer loan of a gang worker with the gangmaster's permission
- Supply from one farmer to another under a share farming agreement
- Worker provided by a contractor to operate machinery
- Supply of a worker to a retail or catering establishment
- Supply of a worker to a distribution warehouse
- Supply of a worker to a wholesale market or establishment
- Provision of a service involving the supply of a machine with an operator
- Use of a worker by a service provider where the service provider is the employer and the owner of machinery / premises used
- Use of a worker where title to the land but not the crops has transferred to a third party

- Supply of a worker by an educational establishment in furtherance of training
- Supply of an individual specialist worker by a specialist labour provider

These provisions and their anticipated impact are described in more detail at **Annex C**. If exclusions are limited to the “technical” points described above, all other activities falling within the scope of the Act would require a licence.

7.3 The do nothing approach would not moderate the application of the licensing arrangements in any way. As a result the licensing scheme would apply to a number of situations where there is either no supply of gang labour or, the risk of exploitation of the workers concerned is minimal. Ministers acknowledged this when the Act was discussed by Parliament and agreed that the Exclusion regulation provisions should be used to ensure that licensing is properly and effectively targeted in a manner that is consistent with the objectives set out at paragraph 3.1 above. **This option is not considered further.**

7.4 The “technical” exclusions address a number of situations primarily in relation to farming where labour is supplied but where that supply involves small numbers, is of limited duration is made by individuals who are not labour providers in the conventional sense or who are supplying the labour to deliver a service. The Act was not intended to regulate such activities. However, if this option is applied in a stand alone capacity it will do little to constrain the wider application of licensing. These exclusions have the support of all stakeholders. Introducing regulations which do no more than make “technical” exclusions would be subject to much the same limitations as the do nothing option and **is not considered further.**

7.5 In view of the general support for the “technical” exclusions they have been combined with all the further options considered in this RIA.

7.6 It is difficult to accurately estimate the savings to business arising from the “technical” exclusions. These will be at least £2m before inclusion of the potentially substantial savings that will arise from the exclusions for farmer to farmer loans and the supply of services by one farmer to another.

8. Options for consideration

8.1 These options primarily consider different approaches to the treatment of food processing activities. The “technical” exclusions are common to each. For ease of reference the numbering of the options follows the option 1 – 4 numbering used in the second consultation exercise and the draft RIA accompanying that consultation paper.

8.2 Another factor common to all these options is a blanket exclusion for all shellfish gathering activities until 1 October 2006. From that date shellfish gathering activity, including the supply and use of workers and family members will be covered by licensing. The only permanent exclusion proposed will be the use of workers to gather shellfish from a fishing vessel at sea. The cost of licensing to businesses in the shellfish sector will be considered in the RIA prepared by the Authority when it sets licence

conditions and fees for this area of work. This temporary exclusion of shellfish gathering results from the consultation on licence standards conducted by the Gangmasters Licensing Authority. This indicated that stand alone licence conditions need to be developed for shellfish gathering activities. Further consultation will be required before these can be finalised. The time limited exclusion proposed allows time for the completion of this process.

Option 1: Include initial processing and exclude second stage processing activities

8.3 This option would include the “technical” exclusions described at paragraph 7.2 above. In addition all off farm secondary processing activities would be excluded. This approach requires a boundary to be drawn between initial and second stage processing. Under this approach second stage processing would be defined as processes that take place after the initial washing, cleaning or grading of agricultural produce or fish. In most cases the nature of the raw produce will be changed in some way as a result of second stage processing e.g. as in the manufacture of meat pies or the preparation of ready meals and the packaging of such products.

8.4 This option is based on a split between initial and second stage processing. We have consulted twice on this approach and stakeholders have indicated unequivocally that the proposed split is not one that is recognised by either labour providers or users. It was noted that confusion could arise if licensing scheme boundaries do not reflect the way the industry is organised. Consequently it was recommended that to avoid ambiguity, licensing should apply to whole labour user sites, not selected activities within a site. Initial and second stage processing often takes place at the same site. If the licensing boundary straddles these two activities it will be difficult for a labour provider to determine whether a licence is needed without a detailed description of the work to be done. This will impose a burden on the labour user. A labour user’s ability to move staff between different activities will also be limited. Introducing exclusions based on this approach could impose unreasonable burdens on both labour providers and users and impose artificial constraints on the way both labour providers and users conduct business. **In view of this, this option is not considered further.** The remaining options seek to ensure that the whole of a labour user’s site is either included or excluded for licensing purposes.

Option 2 : Include selected off farm processing activities and review excluded activities.

8.5 This option builds on the approach suggested at option 2 in the second consultation paper and amends it in the light of the comments received. It would include the “technical” exclusions described at paragraph 7.2 above. In addition processing and packaging work undertaken off farm would be excluded where the produce does not incorporate fresh or raw ingredients. This would limit the application of licensing to on farm activities, off farm processing and packaging of fresh produce, meat, poultry, fish and produce made using fresh ingredients. Shellfish gathering would also be covered from 1 October 2006 onwards.

8.6 As part of this approach the Gangmasters Licensing Authority would be required to review those parts of the food processing sector excluded. The review would establish the volume of labour supplied by labour providers and the number of labour providers / users involved. The research would also probe in more detail the way workers are treated sector by sector. The work would be used to inform future decisions on the scope of exclusions regulations leading to revisions where appropriate in October 2007.

Option 3 : Exclude all off farm activity other than shellfish gathering

8.7 This option would include the “technical” exclusions described at paragraph 7.2 above. In addition all processing and packaging work undertaken off farm would be excluded. This would limit the application of licensing to on farm activities and shellfish gathering (from 1 October).

Option 4 : No exclusion for food processing activities

8.8 This option would include the “technical” exclusions described at paragraph 7.2 above. Further exclusions would be limited to processing and packing done after produce enters the retail distribution and catering sectors. Processing and packaging of non food items e.g. cosmetics containing an agricultural component would also be excluded.

9. Advantages and disadvantages of Option 2 (include selected food processing activities)

9.1 Option 2 incorporates the technical exclusions referred to at paragraph 7.2. These deal with situations where farmers, contractors and other service providers supply labour in small numbers, where the supply is of limited duration or the supply of labour is incidental to the delivery of a service. The Act was not intended to regulate such activities and the risk of exploitation or other forms of illegal activity in this area of activity is very low. Excluding these activities allows the regulatory burdens associated with the act to be reduced at minimal risk.

9.2 This option would apply licensing to selected areas of the food processing sector to reflect specific concerns about exploitation and illegal activity are most acute. Stakeholders have not provided specific evidence of exploitative or illegal activities in any specific areas of the food processing industry. However specific areas that could be targeted include fresh produce packhouses, meat, poultry and fish processing plants. The supply of labour to sites processing and packaging products incorporating fresh / raw ingredients would also be targeted.

9.3 The potential advantages and disadvantages of this option are as follows:

Advantages

- Licensing and associated enforcement more tightly focussed on those areas where there is clear evidence of serious exploitation and illegal activity.

- Scope relatively clear conceptually
- Licensing applies to whole labour user sites
- Regulatory burdens on labour providers and labour users reduced.
- Any future extension of licensing arrangements carefully measured and based on empirical evidence.
- GLA review enables licensing to be focussed on areas where it is needed.

Disadvantages

- Difficult to ring fence targeted areas
- Definition of raw / fresh produce difficult to establish
- Legal definition of licensing scheme boundaries will be complex
- More difficult for a labour provider to know whether a licence is required
- Change in ingredients used could trigger change in licence status
- Administrative costs for labour providers will increase due to need to establish whether a licence is needed for every new labour user enquiry
- Additional administrative costs for labour users keeping labour providers informed of ingredients used in every product processed or packed
- Some reputable labour providers will leave the sector – illegal operators could move in as a result
- Illegal / exploitative labour providers could move their operation to unregulated parts of the food chain
- Scope for evasion by adding food processing activity to fresh produce packhouse
- reduces GLA fee base
- GLA's ability to assist wider Government enforcement activity against gangmasters through intelligence sharing reduced as it would not be active in all areas of food processing.
- Retailers may chose to introduce their own control systems in those parts of the processing sector excluded from the scope of the licensing scheme in order to protect the reputation of their brands. This could lead to increased administrative costs for those labour users and providers in the retailer supply chains who need to demonstrate compliance with the requirements of these systems.
- Any change of scope of the licensing scheme following the review of its operation would take effect relatively soon after the original implementation of the scheme, which could lead to confusion on the part of labour providers and users alike.

10. Advantages and disadvantages of option 3 (restrict licensing to on farm activities)

10.1 This option has the same advantages and disadvantages as option 2 in relation to the proposed “technical” exclusions.

10.2 Excluding all off farm activity (other than shellfish gathering) would significantly reduce the regulatory burdens associated with the Act. However, by adopting this approach there is a considerable risk that exploitative and illegal labour provider activity will continue in the off farm parts of the food chain. There is also a risk that exploitative activity might increase in this area

as a result of displacement from the on farm sector. Consultation has indicated that a majority of key stakeholders do not support this approach.

10.3 The other potential advantages and disadvantages of this option are as follows:

Advantages

- Licensing and associated enforcement would initially be very tightly focussed on activities in the agricultural industry.
- Concentration of compliance and enforcement activities.
- Regulatory burdens on labour providers and labour users minimised.
- Proposed dividing line between initial and second stage processing very clear.
- No constraints on labour users in mixed processing and packaging plants who wish to redeploy workers.
- Processing and packaging of non food products excluded.

Disadvantages

- Off farm processors and packers have a competitive advantage over their on farm counterparts.
- Government commitment to address gangmaster problem called into question
- GLA ability to assist wider Government enforcement activity against gangmasters through intelligence sharing reduced.
- The retailers may chose to introduce their own control systems off-farm in order to protect the reputation of their brands. This could lead to the imposition of increased administrative costs on those labour users and providers operating off-farm who need to demonstrate compliance with the requirements of these systems.
- Ignores evidence of exploitative and illegal labour provider activity beyond the farm gate
- Does not address labour provider concerns about unfair competition beyond the farm gate
- This option could substantially reduce the fee base of the GLA

11. Advantages and disadvantages of option 4 (license all food processing activities)

11.1 This option has the same advantages and disadvantages as option 2 in relation to the proposed “technical” exclusions.

11.2 The potential advantages and disadvantages of this option are as follows:

Advantages

- Proposed dividing line between licensed and unlicensed activity clear.

- No constraints on labour users in processing and packaging plants who wish to redeploy workers.
- Processing and packaging of non food products excluded.
- Wider sector coverage maximises GLA ability to assist wider Government enforcement activity against gangmasters in the sector through intelligence sharing.
- Establishes a level competitive playing field for all labour providers operating in the food chain.
- Also establishes a level playing field for on and off farm food processors.
- Processing and packaging associated with fish and shellfish included.
- Avoids the introduction of retailer control systems associated with the other options.
- Addresses concerns of Government enforcement bodies who have advised full coverage is necessary to ensure effective regulation
- Maximises impact in relation to worker protection
- Maximises benefits for the Exchequer
- Is supported by most industry stakeholders who have been active in the development and implementation of the TLWG's Code of Practice for Labour Providers.

Disadvantages

- Compliance, enforcement and intelligence resources more thinly spread
- Extends licensing to sectors where the empirical evidence of exploitation and illegal activity is less strong
- Regulatory / administrative burdens affect a larger number of labour providers and labour users
- Number of businesses affected by regulatory / administrative burdens difficult to establish

12. Costs

12.1 This section estimates the cost for the labour provider and the labour user and compares the costs associated with options 2, 3, & 4. These regulations have no Government cost implications. The costs incurred by the GLA are considered separately in the Regulatory Impact Assessment on the Gangmasters (Licence Conditions) Rules. Unless otherwise shown the costs in this section relate to the suppliers and users of labour to undertake agricultural work, food, fish and shellfish processing and packaging activities. The costings do not include the costs associated with the licensing of shellfish gathering activities which will be included in the GLA RIA on licence conditions and fees applying to the shellfish gathering sector.

12.2 As indicated at paragraph 7.6 savings of at least £2m can be expected as a result of the "technical" exclusions described at paragraph 7.2. The costs and savings associated with the technical exclusions are not considered further in this section. As a result this section compares the benchmark cost (after taking account of the "technical" exclusions) with the other options considered in relation to food processing activities.

12.3 The final RIA for the Gangmasters (Licence Conditions) Rules assumes that there will be 1000 licence applications and that the licence fee will average around £500. The GLA are proposing to give a £250 discount to those applicants who have undergone a TLWG audit. Labour providers who have not had a TLWG audit will be charged an application fee. It is estimated by the GLA that around 500 applicants will have had an TLWG audit. The other 500 will require an application inspection for which they will be charged around £1700.

12.4 The GLA estimate that the administrative costs incurred by labour providers in making their licence applications is £38,200.

12.4 Defra estimates that it will take one hour for a labour user to familiarise themselves with the licensing arrangements. If the member of staff making the check is paid at the rate of £14.69 ⁽¹⁾ per hour and the add on for accommodation and other costs is 30% then there is a one off familiarisation cost of £19.09 per labour user.

12.5 The food and drink manufacturing industry comprises a number of product sectors. The product sectors which together make up the food manufacturing industry are:

- Cereal products (biscuits, bread and bakery products, breakfast cereals, cakes, desserts and cake mixes)
- Beverages (including tea, coffee, soft drinks, alcoholic beverages, fruit juices, mineral water and spring water)
- Confectionery and Snacks
- Fish and fish products
- Fruit and vegetable processing (jams and preserves, herbs and spices, sauces and condiments and salads)
- Meat processing and meat products
- Oils and fats, margarines and spreads
- Poultry and poultry products

12.6 There are some 7,752 food and drink enterprises in the UK employing some 500,000 people (Source FDF). Precision Prospecting Research uses the supply of temporary workers as a proxy for labour provider activity. The Agricultural Census shows some 300,000 farm holdings in the UK. A sample survey of 2358 businesses undertaken by PP indicates some 21,600 holdings use temporary workers. PP Survey work confirmed that 32% of the holdings (6,952) using temporary labour recruit through a labour provider. On the basis of a survey of 365 labour users in the food processing sector PP estimate that 23% of food processors use temporary workers. (7752 x 23% = 1783). PP Research indicates that 72% of labour users (1783 x 72% = 1284) in the Food Processing sector who use temporary labour use a labour

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

provider. On this basis the scheme potentially covers some 8,236 labour users (see **Annex A**)

12.7 It is assumed that the check, undertaken by a labour user to ensure a labour provider is licensed, will take 30 minutes and that, on average, three will need to be undertaken by each labour user in a year. The annual cost to each labour user of these checks will be £28.63

12.8 On this basis the benchmark costs assuming no exclusions are as follows:

ITEM	ACTIVITY VOLUME	COST(£)
Licence fees costs	1000 applicants at average of £500	500,000
Less Licence fee discounts	500 applicants at average of £250	-125,000
Application Inspection costs met by labour providers	500 applicants at £1700	850,000
Labour provider admin costs in making application	1000 applicants at £38.20	38,200
Labour user costs in familiarising themselves with licence requirements	8236 labour users at £19.09	157,225
Labour user costs in checking that a labour provider is licensed	8236 labour users at £28.63	235,797

12.9 These calculations indicate that if there are no exclusions (other than the “technical” exclusions), the total cost to agricultural and food processing business of the new licensing arrangements will be some £1.66 million in the first year.

Cost savings resulting from option 2

12.10 Under this option licensing would apply to all on farm activities together with off-farm processing and packaging in selective areas. To illustrate this option it has been assumed licensing would be limited to fresh produce packhouses, processing and packing raw, meat, poultry, fish and shellfish and, the use of raw meat, poultry, fish and shellfish as an ingredient in downstream food processing activities. The gathering of shellfish will also be covered from 1 October.

12.11 The fresh produce consortium has some 100 members. Some operate more than one pack house and some are not members of the FPC. On this basis it is assumed there are 150 packhouses in total of which 120 use a labour provider.

12.12 Defra data indicates there are 464 sites engaged in processing fish. It is assumed 25% (116) handle fresh fish and 75% (348) undertake processing work. It is further assumed 23% use temporary labour of whom 72% use a labour provider.

12.13 The meat sector includes:

Number of Abattoirs	359
Meat cutting plants co-located with abattoir	242
Stand alone meat cutting plants	457
Minced meat and meat preparation establishments	249
Total Fresh Meat	1065
Meat product plants (Catering butchery, Retail packing Production of burgers / sausages etc, ready meals, Breaded products etc. curing, drying, canning, Ready meals)	1408
Total	2473

Again it is assumed 23% use temporary labour of whom 72% use a labour provider.

12.14 Based on the figures above it is estimated that this option will require the following users check whether they are using a licensed labour provider:

No of users affected if licence:	
On farm activities	6952
Fresh produce packhouses	120
Fresh meat cutting and packing	176
Fresh fish filleting etc and packing	19
Fresh meat processing and packing	233
Fish processing	58

	7558

12.15 No firm data is available to indicate how many labour providers will be excluded under this option. For cost estimating purposes it has been assumed 250 labour providers would be excluded.

12.16 The savings arising from option 2 are estimated to be:

ITEM	ACTIVITY VOLUME	SAVING (£)
Licence fees costs	250 applicants at average of £500	125,000
Less Licence fee discounts	125 applicants at average of £250	-31,250
Application fee costs	125 applicants at £1,700	212,500

TLWG	1,000 x 75% = 750 excluded
Precision Prospecting	1,000 x 25% = 250 excluded

12.22 The REC figures probably over represent labour providers outside the agricultural area. The reverse is probably true in connection with the Precision Prospecting data which probably over represents smaller labour providers operating exclusively in the agricultural sector. In view of these limitations it has been assumed that 500 fewer labour provider businesses will be licensed if all off farm food processing is excluded.

12.23 From research commissioned by Defra into the number of labour providers active in the food chain it is estimated that there are around 20 labour providers supplying workers to undertake off farm processing and packaging who are not also supplying workers to undertake agricultural work. By comparison the REC has suggested that some 520 of its members supply labour into the food processing sector and have no involvement with the supply of labour on to farms. Evidence drawn from the TLWG audits indicates that These would be excluded under this option. If these figures are grossed up to reflect the full labour provider population (520 / 67 x 100) this implies 776 labour providers might be excluded. The number of labour providers excluded under this option is therefore estimated to be between 20 and 776.

12.24 On the basis of the figures at paragraph 12.6 above some 1,284 fewer labour users will be covered if licensing is limited to on farm activities option.

12.25 The savings arising from option 3 are estimated to be:

ITEM	ACTIVITY VOLUME	SAVING (£)
Licence fees costs	500 applicants at average of £500	250,000
Less Licence fee discounts	250 applicants at average of £250	-62,500
Application fee costs	250 applicants at £1,700	425,000
Labour provider admin costs in making application	500 applicants at £38.20	19,100
Labour user costs in familiarising themselves with licence requirements	1,284 labour users at £19.09	24,512
Labour user costs in checking that a labour provider is licensed	1,284 labour users at £28.63	36,761

This option would generate cost savings of some £692,873.

Cost savings resulting from option 4

12.26 This option would not generate any cost savings compared with the benchmark costs set out at paragraphs 12.2 to 12.7 above.

Comparison of cost savings under options 2, 3 & 4

12.27 A comparison of the options is at Annex G. A comparison of the savings arising from the three options under consideration is provided below:

	Labour User		Labour Provider	
Baseline cost	£393,022		£1,263,200	
	Costs	Benefits	Costs	Benefits
Option 2 (Selective approach)	Some additional admin burdens on those business in scope	£32,354	Some additional admin burdens on those business in scope Businesses out of scope will need to check whether they need a licence for every new contract	£315,800
Option 3 (Limited to on farm)	Increased scope for evasion	£61,273	Unfair competition remains in food processing sector	£631,600
Option 4 (Cover all food processing)	All labour users in scope	Lower admin burdens for business using labour providers	All labour providers in scope	Lower admin burdens for labour providers

13. Business sectors affected

13.1 The following sectors will be directly affected:

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

The following sectors may be indirectly affected:

- Farming and horticulture
- Shellfish gathering
- Meat processing and packing
- Fish (including shellfish) processing and packing
- Other food processing and packing
- Processors and packers of goods incorporating an agricultural or fish component

14. Consultation with small business

14.1 All of the options under consideration will impact on small firms which operate as labour providers and labour users in the industry. A number of small firms could withdraw from this market as a result of this legislation.

14.2 Defra estimates that some 85% of labour providers would be defined as small businesses for the purposes of Regulatory Impact Assessments. A small firm or business is one with:

- fewer than 50 employees; and
- no more than 25% of the business owned by another enterprise (which is not a small business); and either
- less than £4.44 million annual turnover; or
- less than £3.18 million annual balance sheet total.

However, the REC estimates that the proportion of SMEs in the recruitment industry is nearer 95%.

14.3 All the sectors affected by this Act are characterised by a preponderance of small firms. Of the 166,025 businesses which can be regarded as a part of the UK food and drink supply chain, 165,320 are small medium-sized companies employing under 250 people. Of these, 144,295 businesses (86.9%) are micro-businesses, employing less than ten people.

14.4 We have consulted both trade associations in this sector representing small firms and also (through a series of consultative fora) a substantial number of small labour provider businesses. Those businesses who attended the fora were supportive of licensing if licence fees are set at a reasonable level and, it establishes fair competition in their industry. Small labour user businesses are keen to ensure that the licensing arrangements do not impose unnecessary administrative burdens or impede the flexible supply of labour on which they rely. Most of those attending the fora supported the proposals contained in Option 4 above as this would be most effective in addressing their concerns about unfair competition.

15. The economic impacts

15.1 The options under consideration will have differing economic impacts on the businesses directly affected. These have been considered in detail in the cost comparisons above. Overall it is anticipated that none of the options under consideration will impact on the quality or availability of goods or services. None of the options will give rise to new technologies or result in

changes to the investment behaviour into the UK and UK firms overseas and into particular industries.

16. Competition assessment

16.1 The competition filter has been used. It is thought that no single labour provider has more than a 10% market share of the labour provider industry. It is also thought that the three largest labour providers together do not have a 50% market share of the industry. None of the options considered in this RIA are likely to fundamentally affect the structure of the labour provider industry although feedback from some of the consultative forums suggest that in relation to the processing and packaging industry Option 4 may lead to some labour providers leaving the industry in order to evade the licensing requirements. It is also possible that there may be some consolidation among smaller labour provider businesses who seek to achieve the economies of scale necessary to operate a business in compliance with the requirements of the licensing scheme and other legislation governing their activities. The extent of consolidation will vary slightly according to which of the options is used as the basis for finalizing the Exclusion Regulations.

16.2 None of the options proposed would lead to higher set-up costs for new firms that existing firms do not already have to meet. Nor would these proposals lead to higher ongoing costs for new firms that existing firms do not already have to meet. The Government is seeking to foster a fairer competitive environment in the sector by tackling those labour providers who gain an unfair competitive advantage by acting illegally. It is anticipated that some small labour provider businesses will cease trading as stand alone businesses as a result of the introduction of the licensing arrangements. The options considered here are unlikely to have any significant differential impact in this respect.

17. Unintended consequences

17.1 Several responses to the consultation suggested that if the approach described at option 4 above was not adopted then the retailers may chose to introduce their own control systems in those parts of the processing sector excluded from the scope of the licensing scheme in order to protect the reputation of their brands. This could lead to increased administrative costs for those labour users and providers in the retailer supply chains who need to demonstrate compliance with the requirements of these systems.

18. Social impacts

18.1 The options under consideration will have varying social impacts. There is a perception that more needs to be done to improve the level of health and safety at work by regulating the compliance of labour providers with health & safety legislation more closely. Option 4 above would achieve the greatest coverage in this respect with Option 3 achieving the lowest level of coverage.

18.2 It is highly unlikely that any option under consideration will lead to an increased demand from labour providers (and the workers they supply) and users for the services provided by the national health service.

18.3 It is unlikely that any of these options will make much difference to the level of skills and education provided in the processing and packaging sector although over time a more professional approach to the way that labour providers operate their businesses could lead to a greater consideration given to the provision of vocational training.

18.4 It is also unlikely that any of the options would greatly affect the provision of facilities or services that support community cohesion or in other ways that affect the quality of life in the local community. It is possible that closer regulation of labour providers in processing and packaging could lead to a rise in wage levels in that sector as compliance with national minimum wage legislation is monitored more closely. This, in turn, could lead to less dependency upon these types of services.

19. Equality and fairness

19.1 As the legislation affects the public directly, it is necessary to test whether any of the options will have any impact on under-represented groups e.g. labour providers under-represented in the sectors covered by the Gangmasters Licensing Authority on grounds of race, faith, gender or disability. This list is not exhaustive but an indication of the areas to be considered. Age-discrimination is considered separately in the section on children, young and older people, below.

19.2 The analysis at Annex D concludes that the Exclusions regulations will have minimal impact on under-represented groups. Research commissioned by Defra indicated that up to 90% of temporary workers supplied by labour providers to undertake processing and packaging are non-UK nationals. Closer monitoring of the labour providers who supply these workers should act as a more effective deterrent against discriminatory behaviour. In addition, the establishment of helpline facilities at the GLA will provide an additional channel through which aggrieved workers can voice their complaints. Option 4 will have wider coverage and will as a result do more to promote equality and fairness in the way workers are treated. Option 3 would deliver fewest benefits in this regard.

20. Children, young people and older people

20.1 Closer monitoring of labour providers will also ensure that there is a greater degree of compliance with legislation governing the employment of young people. Option 4 would deliver most benefits in this regard and option 3 the fewest.

21. Income groups

21.1 In general the workers supplied by labour providers to undertake processing and packaging in the food chain receive relatively low rates of pay. The research commissioned by Defra found that 90% of workers who took part in the research received between £4.85 and £5.99 an hour. In some cases it is thought that deductions from pay could take the rates of pay received by some of these workers below the statutory minimum. Closer

monitoring of labour providers active in processing and packaging will help to ensure that illegal deductions are not made and workers receive rates of pay which meet the requirements of minimum wage legislation. Option 4 would deliver most benefits in this regard and option 3 the fewest.

22. Human rights

22.1 The compatibility of these regulations, with the European Convention on Human Rights (ECHR), has been considered. The Regulations do not engage Article 1 of the First Protocol since any labour provider, forced out of business due to a licence refusal or revocation, would have been running a business which has failed to comply with extant Employment Protection Legislation. It is considered that no specific articles of the ECHR are engaged by the Regulations. Accordingly, it is considered that the provisions of the Gangmasters Licensing (Exclusions) Regulations are compatible with the European Convention on Human Rights.

23. Particular regions of the UK

23.1 This proposal will have the greatest impact in those areas of the UK where activities excluded by the Regulations take place. Agricultural activities take place throughout the UK while food processing and packaging is thought to be most common in Lincolnshire, East Anglia and the Midlands. Fish processing is most common in Scotland while the gathering of shellfish is most common at sites such as Morecambe Bay and the Dee Estuary.

24. Scotland and Wales

24.1 The Exclusion Regulations will also cover Scotland and Wales

25. The impact on rural communities (i.e. Rural Proofing)

25.1 Annex E considers the rural proofing checklist. This indicates that the proposed Regulations impact primarily on rural businesses.

26. Environmental impact

26.1 Annex F considers whether the proposed Regulations will have an environmental impact. It concludes that any direct impact is unlikely.

27. Sustainable development

27.1 The proposed regulations have no impact in relation to sustainable development. This is primarily an issue which the GLA should take into consideration when setting licence conditions if appropriate.

28. Hampton and “Less is More”

28.1 In practice these regulations do not add to any existing regulatory burdens. They introduce exclusions and therefore have the scope to reduce regulatory burdens. The options under consideration will result in the

application of differing levels of regulatory burdens. Regulatory burdens would be lightest under option 3 and heaviest under option 4.

28.2 The GLA has consulted separately on the detail of the new licensing arrangements including, licence standards, application inspections and licence fee rates. The licence standards proposed by the GLA have been based on the TLWG code of practice and in general terms require a labour provider to be a fit and proper person and require the business to operate within the existing regulatory framework for such businesses. Where there is overlap between the licence conditions and other regulatory provisions considerable care has been taken to ensure the licence conditions impose no additional burdens.

28.3 Initially it is anticipated that all applicants who have not had a TLWG audit will be inspected. However in the longer term the GLA intends to move to a risk based approach to application inspections. Licence fees are expected to average some £500 per annum. Those businesses requiring an application inspection will be charged an average of some £1,700.

29. Enforcement and sanctions

29.1 The Act establishes four criminal offences. The primary offence involves operating as a gangmaster without a licence. It will also be an offence to be in possession of a false licence or other documents purporting to show that an unlicensed gangmaster is licensed. It will be an offence for a person to enter into an arrangement with an unlicensed gangmaster for the supply of labour. The fourth offence will be obstructing an enforcement or compliance officer. These criminal offences will be enforced by enforcement officers appointed and funded by the Government. The maximum penalties for the principal offences of operating without a licence is a sentence of ten years imprisonment and a fine of up to £5000 and for using an unlicensed gangmaster is a sentence of one year imprisonment and a fine of up to £5000. The Department for Constitutional Affairs was consulted about the nature and scale of the offences when the Gangmasters (Licensing) Act 2004 was drafted.

29.2 The Act also provides for the appointment of Compliance Officers to verify whether licence holders are complying with the terms of their licence. Compliance officers would be appointed by the Licensing Authority and would be funded through licence fee income. Compliance inspections would be targeted according to risk. This will be assessed using information available to the Authority including information provided by Government enforcement agencies. The cost of compliance inspections will depend on the complexity of the licence conditions determined by the Authority.

30. Implementation and delivery plan

30.1 It is intended that the Exclusions Regulations should be in place when the licensing scheme becomes operational on 6 April 2006. This will ensure that the GLA as operator of the licensing scheme and labour providers and users have a clear view of the scheme boundaries before applications are submitted to the GLA.

31. Post implementation review

31.1 As acknowledged at paragraph 11.2 above there is some uncertainty about the precise number of businesses that will be affected by the decision to implement licensing on the basis of the approach at option 4. As a consequence it has been necessary to estimate the administrative and regulatory burdens associated with this approach. In view of this the Government proposes to conduct a post implementation review of the licensing scheme at the end of the first year of operation. This review will be conducted by Defra, in conjunction with the BRE and DTI, and will seek to ensure that the licensing arrangements follow the principles of better regulation. In particular the review will seek to ensure that:

- licensing is applied only in those sectors where it is justified in order to address systematic and endemic mistreatment of workers;
- the Gangmaster Licensing Authority are enforcing in a proportionate manner;
- there are light touch inspections and form filling for those sectors with scant evidence of systematic and endemic mistreatment of workers; and
- risk profiling of all businesses ensures that generally compliant businesses are given a light touch.

31.2 Membership of the Gangmasters Licensing Authority will be reviewed after 3 years and the operation of the licensing scheme will be reviewed every 5 years. The review will take the form of an independent external audit. The Act also makes provision for the Gangmasters Licensing Authority to monitor the licensing arrangements. The Secretary of State can also issue directions where appropriate.

32. Consultation

Within Government

32.1 Within Government all key enforcement and business sponsorship interests have been consulted. These include Home Office, Department for Work and Pensions, Inland Revenue, Customs and Excise, Department of Trade and Industry, Inland Revenue, Cabinet Office and Health and Safety Executive.

Public consultation

32.2 Two consultation exercises have been conducted in February and September 2005. The second consultation concentrated on the way licensing applies in relation to food processing activities. All key stakeholder organisations with an interest in the scope and content of the Regulations were consulted during these consultation periods. These organisations include the National Farmers' Union, Transport and General Workers Union, Association of Labour Providers, Fresh Produce Consortium, Food and Drink Federation, Recruitment and Employment Confederation, Citizens Advice Bureau, Shellfish Association of Great Britain, Sea Fish Industry Authority and

GMB. In addition Defra and the GLA has held road show consultation events with labour providers to explain the implications of the second consultation on the Exclusion Regulations and GLA's consultation on the Licence Conditions Regulations.

33. Summary and Recommendations

33.1 The costs and benefits in the first year of licensing associated with each option are summarised at paragraph 12.27. The Government recommends adoption of option 4 i.e. the exclusion of the activities described at paragraph 7.2 together with the supply / use of labour to process and pack non food / agricultural products e.g. cosmetics containing an agricultural component. No exclusion in relation to the supply of labour to undertake food processing / packaging activities is proposed. These arrangements will be introduced from 6 April 2006. Licensing will be introduced in relation to the supply and use of workers to gather shellfish from 1 October 2006.

34. Ministerial declaration

34.1 I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs.

Signed Bach

Date 8 March 2006

Minister's Name Lord Bach

Title Minister for Sustainable Farming and Food

Department for Environment, Food and Rural Affairs

Contact Point: Ian Kelly (ian.r.kelly@defra.gsi.gov.uk), tel. 020 7238 5702

ESTIMATED NUMBER OF LABOUR PROVIDERS / LABOUR USERS AFFECTED BY LICENSING

Total Number of Labour User Businesses engaged in:

(1)	Primary production / agriculture	300,000
(2)	Food processing / manufacture	7,752

Labour Users who use casual / temporary labour

(3)	Total Number	23,386
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Of which:

(4)	Undertake on farm activities	21,603
(5)	Undertake off farm food processing	1,783

Labour users who use a labour provider

(6)	Total Number	8,236
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Of which:

(7)	Undertake on farm activities	6,952
(8)	Undertake off farm food processing	1,284

*“Visible” Labour providers **

(9)	Total Number	1,000
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Of which:

	REC	TLWG	PP	MEAN
(10) Supply on farm activities	100	250	750	500
(11) Supply off farm food processing	900	750	250	500

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

IMPACT OF LICENSING ON LABOUR USERS IN THE FOOD PROCESSING INDUSTRY

Food processing sector

The food and drink manufacturing industry comprises a number of product sectors. The product sectors which together make up the food manufacturing industry are:

- Cereal products (biscuits, bread and bakery products, breakfast cereals, cakes, desserts and cake mixes)
- Beverages (including tea, coffee, soft drinks, alcoholic beverages, fruit juices, mineral water and spring water)
- Confectionery and Snacks
- Fish and fish products
- Fruit and vegetable processing (jams and preserves, herbs and spices, sauces and condiments and salads)
- Meat processing and meat products
- Oils and fats, margarines and spreads
- Poultry and poultry products

There are some 7,752 food and drink enterprises in the UK employing some 500,000 people (Source FDF).

Precision Prospecting Research

PP use supply of temporary workers as a proxy for labour provider activity.

Agricultural Census shows some 300,000 farm holdings in the UK. Sample survey of 2358 businesses undertaken by PP indicates some 21,600 holdings use temporary workers.

PP Survey work confirmed that 32% of the holdings (6,950) using temporary labour recruit through a labour provider

On the basis of a survey of 365 labour users in the food processing sector PP estimate that 23% of food processors use temporary workers. ($7752 \times 23\% = 1783$)

PP Research indicates that 72% of labour users ($1783 \times 72\% = 1284$) in the Food Processing sector who use temporary labour use a labour provider.

Packhouses

The fresh produce consortium has some 100 members

Some operate more than one pack house and some not members of the FPC

Assumed 150 packhouses in total of which 120 use a labour provider

Fish sector

Defra data indicates 464 sites engaged in processing fish

Assume 25% (116) handle fresh fish

Assume 75% (348) undertake processing work

Note: Of the above it is assumed 23% use temporary labour of whom 72% use a labour provider

Meat Sector

Number of Abattoirs	359
Meat cutting plants co-located with abattoir	242
Stand alone meat cutting plants	457
Minced meat and meat preparation establishments	249
Total Fresh Meat	1065
Meat product plants (Catering butchery, Retail packing Production of burgers / sausages etc, ready meals, Breaded products etc. curing, drying, canning, Ready meals)	1408
Total	2473

Note: Of the above it is assumed 23% use temporary labour of whom 72% use a labour provider

Impact of licensing on Labour Users

Range in Labour users numbers*

No of users affected if licence on farm activities only	6952
No of users affected if licence:	
On farm activities	6952
Fresh produce packhouses	120
Fresh meat cutting and packing	176
Fresh fish filleting etc and packing	19

	7267
No of users affected if licence:	
On farm activities	6952

Fresh produce packhouses	120
Fresh meat cutting and packing	176
Fresh fish filleting etc and packing	19
Fresh meat processing and packing	233
Fish processing	58

7558

No of users affected if licence:

On farm activities	6952
Fresh produce packhouses	120
Fresh meat cutting and packing	176
Fresh fish filleting etc and packing	19
Fresh meat processing and packing	233
Fish processing	58
All other food processing and packing involving meat	N/K

7558+??

No of users affected if licence on farm plus all food
Processing

8236

* Note there may be some double counting as some food processing activities take place on farm

DESCRIPTION OF PROPOSED “TECHNICAL” EXCLUSIONS

Note: It is not possible to quantify the savings arising from each of the exclusions set out below as, in most cases, information about labour provider activity in these areas is not available. Where an estimate is provided this has been done on the basis that a labour provider will incur costs of £500 for a gangmasters licence, £1,700 for an application inspection and administrative costs of £38.20.

Share farming arrangements

A share farmer could be deemed as acting as a gangmaster if he provides a worker to undertake work on the farm which is the subject of a share farming agreement. On the basis of information about share farming collected by the Farm Business Survey it is estimated that there might be some 700-750 farms which are cultivated on this basis in the UK. The exclusion of this type of arrangement could equate to a reduction in the cost of licensing to the agricultural industry in the order of £1.7m per annum.

Short term farmer to farmer loans of workers

Information about the extent of these informal arrangements is unknown. In June 2004 the Agricultural Census estimated that more than 15700 holdings in England employed one or more full time workers. On the basis of this figure it is likely that farmer to farmer loans are not uncommon in the UK. In view of this the reduction in the cost of the licensing scheme to the agricultural industry stemming from the exclusion of farmer to farmer loans could, in theory at least, be substantial. Actual savings might be lower as it would be very difficult to enforce the licensing provisions in relation to such transactions.

Exceptional farmer to farmer loans of gang workers

This covers the circumstance where the labour loaned was originally supplied to the lender by a labour provider. The extent of these arrangements is also unknown but on the basis that the June 2004 Agricultural Census estimated that there are some 15500 holdings in England alone which employ casual and gang labour it is likely that this type of arrangement is not uncommon.

Provision of short term agricultural services between farmers involving the supply of a worker

Again the frequency of this arrangement is not known but it is likely that it is not uncommon. In theory the savings to the agricultural industry from this exclusion could be significant. However, actual savings might be lower as it would be very difficult to enforce the licensing provisions in relation to such transactions

The supply of a worker by a farmer to an agricultural contractor to operate machinery supplied by that contractor for use on the farmer's own premise

Information about this type of arrangement is not known. However, in practical terms the reduction in licensing costs to agriculture is likely to be limited.

The supply of a worker by a sole operator appointed under SAWS to other SAWS operators

There are six sole operators under SAWS. Although this practice is not common under the scheme, it is likely that all at some time during the year will transfer SAWS students to another operator. Not needing to obtain a licence will, in theory, save the sole operators total licence costs of some £13,500 per annum.

The provision of sub-contract services which involve the use of labour by the sub-contractor but not the supply of labour by the sub-contractor

This exclusion relates to the provision of mainstream subcontracting services e.g. a service provided by a subcontractor to a main contractor to fillet a catch of fish before the catch is returned to the main contractor for further processing. The terms of the Act capture arrangements such as this, but there was never any intention on the part of Government that services which involve a discrete labour supply element should be licensed. It is not known how many subcontracting agreements of this type are made but they are likely to be common. In theory, excluding them from the scope of the licensing scheme will substantially reduce the cost of the licensing scheme to the food processing industry.

The supply of a worker as part of the provision of an agricultural machinery service by an agricultural contractor

This exclusion covers the provision of an agricultural machinery service where the supply of that service also involves the supply of a worker by the contractor to operate or support the operation of the machinery. In its response to the first consultation the National Association of Agricultural Contractors estimated that there are up to 6000 land based contractors operating in the UK. Some of these will not be involved in the supply of machinery services and others will not supply workers to operate or support the operation of machinery. Furthermore, not all will be active in agriculture. Nevertheless it is thought that this exclusion will exclude many agricultural contractors from the need to obtain a gangmasters licence.

The employment of workers by someone who has sold a farm but retained the ownership of a crop and uses those workers to harvest that crop

Information about this type of arrangement is not known but it is not thought to be common.

The supply of a qualified slaughterman to work in an abattoir

The cost savings resulting from this exclusion are likely to be small as labour providers are not thought to play a major role in supplying qualified slaughtermen.

The supply of students by an educational establishment

This exclusion covers the supply of students to undertake work experience, a work placement or course related work (such as a sandwich course) in agriculture. There are around 50 land based colleges and around 700 rural schools in the UK. If it is assumed that all of the colleges and 10% of the schools provide this type of placement then it is estimated that excluding this sector from the licensing requirements would reduce the cost of licensing to this sector by around £269,000 per year.

The supply of an individual skilled worker

This exclusion covers agencies involved in the supply of specialist workers such as a shepherds and herdsmen. It is not possible to estimate the reduction in the cost of licensing that would stem from this exclusion as information about the number of specialist agencies in agriculture is not available.

Gathering of Shellfish

The direct employment of workers to gather shellfish by hand on or above the shoreline

The licensing of enterprises which directly employ workers to gather shellfish on or above the shoreline is being deferred by the GLA until it has completed the issue of licences to labour providers acting in the other areas covered by the licensing scheme. It is anticipated that the GLA will commence the invitation of licence applications from employers after 1st October 2006]and that the offence of operating without a licence will become live on 1st April 2007. Until that date these enterprises will not need to obtain a licence.

The direct employment of workers to gather shellfish by a fishing vessel

Unlike the gathering of shellfish on the shoreline, it is proposed to permanently exclude the gathering of shellfish at sea. No information is available on the number of fishing vessels used for this purpose.

EQUALITY AND FAIRNESS: UNDER-REPRESENTED GROUPS

1. As the legislation and the proposals affect the public directly, it is necessary to test either option will have any impact on under-represented groups e.g. on account of their race, faith, gender or disability.

2. Any direct or indirect discrimination or negative impact on certain racial groups or faiths, male or female labour providers or labour providers with a disability would be more likely to arise from the Authority's licensing arrangements rather than from Exclusions Regulations. It is for the Authority to ensure that its Rules and operational procedures do not give rise to discrimination or a negative impact

Race equality

3. The exclusions regulations have no direct impact on race equality issues.

Faith equality

4. The exclusions regulations have no direct impact on faith equality issues.

Gender equality

5. The exclusions regulations have no direct impact on gender equality issues.

Disability equality

3. The exclusions regulations have no direct impact on disability equality issues.

RURAL PROOFING CHECKLIST

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

These regulations are not expected to have any impact on the availability of services.

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

Not relevant.

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

Not relevant.

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

Licensing should help ensure employers do not make illegal deductions from pay to cover transport costs. Option 4 will have the greatest impact in this area.

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

Yes. Clear guidance will be needed to ensure labour providers, labour users, compliance and enforcement officers understand the boundaries associated with licensing.

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

Not relevant.

7. Does the policy rely on infrastructure for delivery?

No

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

These regulations will have an impact on rural businesses and some urban businesses. The self-employed (as with other businesses) will be affected by the extent to which the regulations exclude them from the requirement to obtain a gangmasters' licence and the requirement to check that a gangmaster is licensed.

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

Yes. It is anticipated that a high proportion of the processing and packaging businesses affected will be located in rural areas.

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

Yes. Workers in processing and packaging plants are generally relatively low paid and a significant number are part time or seasonally employed. Many are migrant workers.

11. Is the policy targeted at the disadvantaged?

No.

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

No.

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

No.

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

No

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

No.

ENVIRONMENTAL IMPACT CHECKLIST

1. Will the policy option lead to a change in the emission of greenhouse gases?

Not relevant

2. Will the policy option be vulnerable to the predicted effect of climate change?

Not relevant.

3. Will the policy option lead to a change in the financial costs or the environmental and health impacts of waste management?

No.

4. Will the policy option impact significantly on air quality?

Not relevant

5. Will the policy option involve any material change to the appearance of the landscape or townscape?

No.

6. Will the proposal change the degree of water pollution, levels of abstraction of water or exposure to flood risk?

No.

7. Will the policy option disturb or enhance habitat or wildlife?

No.

8. Will the policy option affect the number of people exposed to noise or the levels to which they are exposed?

No.

EXCLUSIONS – POSITION OF ACTIVITIES UNDER THE THREE OPTIONS CONSIDERED IN DETAIL

	Option 2	Option 3	Option 4
Any activity undertaken on farm	I	I	I
Supply / use of workers / family members to gather shellfish (1)	I	I	I
Use of workers to gather shellfish on board a fishing vessel (1)	E	E	E
Work done in Fresh produce packhouses	I	E	I
Work done in meat / poultry / fish processing plants	I	E	I
Work with fresh produce in food manufacturing plant	E	E	I
Work with fresh meat / poultry / fish in food manufacturing plant	E	E	I
Food manufacturing plants	E	E	I
Off farm retail / retail distribution	E	E	E
Off farm catering	E	E	E

Notes - (1) From 1 October 2006

PRODUCTION OF CANNED CELERY SOUP

		Option 2	Option 3	Option 4
On Farm	Pick celery	I	I	I
	Pack	I	I	I
Off farm Packhouse	Unpack Celery	I	E	I
	Wash	I	E	I
	Trim	I	E	I
	Dice	I	E	I
	Pack	I	E	I
Food Processing Plant	Unpack diced celery	E	E	I
	Mix ingredients	E	E	I
	Cook	E	E	I
	Can	E	E	I
	Label	E	E	I
	Pack for retail distribution	E	E	I

PRODUCTION OF CANNED CELERY SOUP (Version 2)

		Option 2	Option 3	Option 4
On Farm	Pick celery	I	I	I
	Wash	I	I	I
	Trim	I	I	I
	Dice	I	I	I
	Pack	I	I	I
Food Processing Plant	Unpack diced celery	E	E	I
	Mix ingredients	E	E	I

	Cook	E	E	I
	Can	E	E	I
	Label	E	E	I
	Pack for retail distribution	E	E	I

PREPARATION OF BAGGED MIXED SALAD LEAVES (Version 1)

		Option 2	Option 3	Option 4
On Farm	Pick lettuces etc	I	I	I
	Trim	I	I	I
	Wash	I	I	I
	Pack for retail distribution	I	I	I

PREPARATION OF BAGGED MIXED SALAD LEAVES (Version 2)

		Option 2	Option 3	Option 4
On Farm	Pick lettuces etc	I	I	I
	Trim	I	I	I
	Wash	I	I	I
	Pack	I	I	I
Off Farm Packhouse	Mix with other salad leaves	I	E	I
	Pack for retail distribution	I	E	I

PREPARATION OF SALAD WITH CROUTONS AND CHEESE

		Option 2	Option 3	Option 4
On Farm	Pick lettuces etc	I	I	I
	Trim	I	I	I
	Wash	I	I	I
	Pack	I	I	I
Off Farm Processing Plant	Mix with other salad leaves croutons and cheese	E	E	I
	Pack for retail distribution	E	E	I

