

**EXPLANATORY MEMORANDUM TO
THE GANGMASTERS (LICENSING CONDITIONS) (No. 2) RULES 2006**

2006 No. 2373

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

2. Description

2.1 The Gangmasters (Licensing Conditions) (No. 2) Rules 2006 revoke and replace the existing Gangmasters (Licensing Conditions) Rules 2006¹ (the “existing Rules”). The changes to the existing Rules, and the reasons for such changes, are as follows.

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

3.1 Two of the changes proposed are made in response to points raised by the Joint Committee on Statutory Instruments (JCSI) on existing Rules.²

4. Legislative Background

4.1 The Gangmasters (Licensing Conditions) Rules are made of the Gangmasters (Licensing) Act 2004. The Act established the Gangmasters Licensing Authority to set up and operate a licensing scheme for gangmasters operating in the agriculture, shellfish gathering and associated processing and packaging sectors. Under section 8 of the Act, the Authority has the power to make rules to establish the necessary arrangements to operate the licensing scheme and the conditions that will apply.

5. Extent

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

At the end of 2005, the Gangmasters Licensing Authority consulted on proposals for the arrangements for licensing gangmasters. On the basis of this consultation, the Gangmasters (Licensing Conditions) Rules 2006 were introduced in April 2006 and allowed the Authority to start accepting licence application for the Agriculture, Food Processing and Packaging sectors.

¹ SI 2006 No. 660

² JCSI Twenty-Fifth Report viewed at:
www.publications.parliament.uk/pa/jt200506/jtselect/jtstatin/181/18108.htm

Feedback from the consultation exercise indicated that it was necessary to adapt the conditions developed for licensing in the agricultural sectors to cover the arrangements that apply in the shellfish-gathering industry. A consultation on the specific licensing arrangements for shellfish gathering closed on 5 July 2006. In light of the responses received the existing Rules are revoked and replaced. New provisions are now included specific for licences covering the shellfish-gathering sector.

In addition to this, minor changes are also proposed to the existing Rules in response to findings by the JCSI as well as in light of the Authority's operational experience.

Changes to the existing Rules

The definition of Principal Authority at **Rule 1(2)** simplifies the current definition at Rule 2 in the existing Rules. The current definition has generated some confusion as to which person should be put forward as the Principal Authority.

Rule 4(3) now makes clear that licence holders should only notify the Authority of significant changes to details submitted in their application rather than all details. The changes are specified in the Authority's guidance.

Rule 4(8)(c) is a new provision that requires the licence holder to disclose his licence number to any worker used by him.

Rule 7(4) introduces a £250 discount for licence applications for gathering shellfish received before 30 November 2006.

Paragraph 23 (Civil liability) and Paragraph 24 (Effect of prohibited or unenforceable terms and recoverability of money) of Schedule in the existing Rules are moved to main body of the Rules (to **Rule 10** and **Rule 11** respectively). This is in response to the JCSI point that it is not appropriate to include these provisions in the Schedule as they are not conditions with which a licence holder must comply with.

Paragraph 18 of the Schedule now makes clear that the restrictions on disclosing information are subject to the provisions in Paragraph 14, which require licence holders to inform labour users of information that indicates that the worker may be unsuitable for positions for which they are being supplied.

Paragraph 23 of the Schedule sets out specific conditions for licences permitting gangmasters to operate in the shellfish-gathering sector. This should be read alongside the Authority's updated Licensing Standards. The Licensing Standards draws together conditions in the Rules and obligations from other enactments. 12(1) and (2) of the Gangmasters (Licensing Authority) Regulations 2005 require compliance with enactments that relate to, or affect the conduct of a licence holder. The Licensing Standards now include additional obligations for shellfish gathering – these are included in the Full RIA.

8. Impact

8.1 A Regulatory Impact Assessment assessing the introduction of licensing to the shellfish-gathering sector is attached to this memorandum.

9. Contact

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

Full Regulatory Impact Assessment

Objective

1. To introduce licensing arrangements for gangmasters operating in the shellfish-gathering sector.

Background

2. The Gangmasters (Licensing) Act 2004, hereafter referred to as “the Act”, introduces licensing for gangmasters supplying labour for the agricultural work and associated food processing and packaging sectors. Where gathering of shellfish is involved the Act defines acting as a gangmaster as both the supply and use of workers to gather shellfish. This only applies to shellfish gathered by hand on or above the shoreline.
3. At the end of 2006, the GLA consulted on conditions that will govern the operation of the licensing scheme. On the basis of the outcome of this consultation, the Gangmasters (Licensing Conditions) Rules 2006 were introduced to allow the GLA to start accepting licence applications for the agriculture and processing sectors from the 6 April 2006, with the intention of the scheme becoming mandatory from October 2006.
4. Feedback from the GLA consultation on the licensing scheme indicated that it was necessary to adapt the arrangements developed for licensing in agriculture, to cover the unique arrangements that apply in the shellfish gathering industry. In light of this, licensing for shellfish gathering is excluded, through the Gangmasters Licensing (Exclusions) Regulations 2006, until 1 October 2006. This RIA considers the conditions that should apply to gangmasters operating in shellfish gathering.
5. The RIA for the Gangmasters (Licensing Conditions) Rules is available on the GLA website: www.gla.gov.uk/publications.htm.

Rationale for Government Intervention

6. The exclusion for operating as a gangmaster in shellfish gathering ends on 1 October 2006. Without tailored licensing arrangements, the sector would be required to comply with the Licensing Standards³ for the agriculture and processing sectors. While much of the Licensing Standards are still applicable, its “agriculture focus” means they do not take account of the working arrangements unique to shellfish gathering. Therefore, further work has been necessary to refine the Licensing Standards so that they are applicable to the shellfish-gathering sector.
7. Following the Morecambe Bay tragedy, the risks with gathering shellfish are well known. Many tidal areas have areas of sinking sand and places where shellfish beds can only be accessed by crossing river channels. Good knowledge of tide times is essential, otherwise there is a danger of the tide coming in and cutting off access back to the shore. Shellfish gathering can also take place at night, which increases the potential dangers. In order to provide necessary protections to workers, the conditions attached to licences for shellfish gathering will need to address these risks.

³ The GLA Licensing Standards for Agriculture, Horticulture and Processing and Packaging for Food, Fish and Shellfish set out the minimum standard that gangmasters operating in these sectors should comply with.

Consultation

8. The GLA's first consultation sought views on the overall arrangements for the licensing scheme. The GLA consulted on proposals to introduce licensing to the shellfish gathering sector between 24 May and 5 July 2006.

Sectors and Groups Affected

9. Anyone acting as a gangmaster in the shellfish-gathering sector will be affected. As stated earlier, where gathering of shellfish is involved the Act defines acting as a gangmaster as both the supply and use of workers to gather shellfish.
10. It is believed that there is a very small number of gangmasters who supply workers to labour users in this sector. The majority of those who will need a licence will use workers to gather shellfish.
11. A lack of reliable market information makes it difficult to estimate the numbers of those who will need a licence. The GLA has informally consulted the Sea Fisheries Committees for England and Wales, the Scottish Executive and the Department for Agriculture and Rural Development in Northern Ireland. Based on the information received, it is estimated that there are between 100 and 200 businesses and/or individuals who would require a licence to operate under the proposed arrangements in the shellfish-gathering sector.
12. The GLA estimates that 1000 gangmasters will apply for a licence to supply labour to agriculture and processing. It is estimated that a small number may apply for the second category for shellfish gathering. For 2006-07, the GLA proposes there will be only one licence fee charge – the GLA will not charge any additional costs for those with a licence with one category who then apply for the other category. The GLA is proposing to charge for Application Inspections (an inspection conducted at the point of application) conducted for shellfish gathering applications except where an Application Inspection has already occurred for licences issued to those operating in agriculture and processing. The GLA will not charge an applicant twice for an Application Inspection.
13. The costs in this RIA are based on 100 – 200 gangmasters applying for a licence to operate in the shellfish gathering sector from 1 October 2006 until the Act offences associated are commenced for shellfish gathering on 6 April 2007. For the purposes of this RIA, the 100 – 200 possible applications are taken as the number for Year 1. After that date, the GLA expects to receive between 10 – 20 new applications a year. This is based on the Rules RIA estimates for new applications post-Year 1.

Options

14. This RIA considers the options for the licence conditions that should apply for the shellfish-gathering sector.

Option 1

15. Do nothing – i.e. rely on the Licence Standards for agriculture and processing to cover shellfish gathering.

Option 2

16. Introduce Licensing Standards modified to the particular arrangements that occur in shellfish gathering. The GLA proposes that:

- Conditions in the Licensing Standards that are applicable will continue to apply;
- Gangmasters will be responsible for ensuring their workers follow the HSE Guidelines for safe working in estuaries and tidal areas. These guidelines were first issued following the Morecambe Bay tragedy and are widely recognised as best practice for the industry.
- Where a permit or licence for shellfish gathering is required, the gangmaster must ensure that their workers comply with that permit or licence.

Benefits

Option 1

17. Replicating the same conditions for agriculture and processing will offer the same basic safeguards and protection to workers operating in the shellfish-gathering sector. However, without extending the conditions, workers could be exposed to risks inherent with the type of work unique in gathering shellfish.

Option 2

18. As for option 1, safeguards will be in place to protect the worker. The additional conditions focussed on the nature of work in gathering shellfish will also ensure risks associated with the sector are covered.

Costs and disadvantages

Option 1

Applying for a licence

19. Gangmasters will incur one off indirect costs through time spent familiarising guidance, gathering information and completing the application form – this is estimated to be no longer than 2 hours, with the average salary of the person undertaking this work estimated as £14.69 per hour (the same as for calculations in the Rules RIA). Gangmasters may also incur non-wage costs. To take account of this, the calculations for assessing the cost to business are multiplied by 30 per cent (or 1.3).⁴ Therefore, for an individual gangmaster, the cost would be no more than £38.20. For 100 – 200 gangmasters, the total costs are estimated to be £3,820 - £7,640 in year 1.
20. On basis of 10 – 20 new applications in years 2 and 3, and using the same calculations as above, the costs for the second and third years for new applications is estimated to be approximately £190 - £380.
21. The GLA will incur costs through processing applications. The time required for the GLA staff for checking and assessing the application, initiating checks with other Government Departments (OGDs) and making a decision is estimated to take an average of 1 - 2 hours. This work will be undertaken at Administrative Officer level with an hourly rate of £14 (including associated overhead costs). For 100 applications, the GLA staff costs for year 1 are estimated to be £1,400 – £2,800. For 200 applications, the GLA staff costs are estimated to be £2,800 - £5,600.
22. On the basis of 10 – 20 new applications in years 2 – 3, the GLA staff costs for the second and third years is estimated to be £140 - £280 (for 10 applications) and £280 - £560 (for 20 applications).

⁴ See www.cabinetoffice.gov.uk/regulation/ria/ria_guidance/costs_and_benefits/quantification.asp

Application Assessment and Inspections

23. As for agriculture and processing, the GLA proposes that all shellfish-gathering applications will be subject to an Application Inspection (AI) until sufficient evidence is gathered to allow a risk based approach to be introduced.
24. It is estimated gangmasters will spend on an average 2 hours preparing for an Application Inspection. Applicants will incur one off costs for preparing for an Applications Inspection. It is estimated that the average salary of the gangmaster who would spend time preparing for an Application Inspection is £14.69 per hour, plus possible non-wage labour costs. Again, to take account of this, the calculations for assessing the cost are multiplied by 30 per cent (or 1.3). Therefore, the cost for preparing for an Application Inspection for an individual gangmaster is estimated to be approximately £38.
25. For 100 – 200 Application Inspections in year 1, the total cost for this preparatory work is estimated to be £3,820 - £7,640. In years 2 – 3 with 10 – 20 Applications Inspections, the total cost for this preparatory work is estimated to be approximately £380 - £760.
26. The GLA will incur staff costs through arranging and scheduling an Application Inspection. It is estimated the time required for this will be no longer than 30 minutes (or 0.5 hours). This work will be undertaken at Administrative Officer level with an hourly rate of £14 (including associated overhead costs). On the basis of 100 - 200 Application Inspections in year 1, the GLA costs for this work are estimated to be £700 - £1,400.
27. For 10 – 20 Application Inspections in years 2 – 3, the GLA staff cost for arranging and scheduling Application Inspections is estimated to be £70 - £140.
28. The average unit cost for the GLA to conduct one inspection is £1,700. This is based on inspections lasting 1.5 days and includes staff and non-staff (such interpreter services) costs. For 100 – 200 Application Inspections, the total cost to the GLA is estimated to be between £170,000 - £340,000.

Licence Fee and Charges

29. Fees and charges are reassessed each year. For 2006-07, there will be one licence fee regime covering applications for Shellfish Gathering and Agriculture and Processing. The 2006-07 licence fee levels for Shellfish Gathering applications that are not already covered by a licence will be the same as for Agriculture and Processing. This will give parity across the different sectors that are subject to licensing. Therefore, the fee levels are proposed to be:

Annual turnover of applicant	Fee level
More than £10 million	£4,000
£5 – 10 million	£2,000
£1 – 5 million	£750
Less than £1 million	£250

30. For 2006-07, the GLA proposes there will be only one licence fee charge – the GLA will not charge any additional costs for those with a licence with one category who

then apply for the other category. The GLA estimates that only a very small number will seek to have both categories for their licence.

31. The charges for AIs will also remain the same:

Annual turnover of applicant	AI Charge
More than £10 million	£2,500 plus VAT
£5 – 10 million	£2,100 plus VAT
£1 – 5 million	£1,850 plus VAT
Less than £1 million	£1,600 plus VAT

32. Those who have already paid for an AI will not be required to pay an additional charge if they apply for a second category.
33. In order to reduce costs and encourage early applications, the GLA will also offer a £250 discount against the first year's licence fee for shellfish gathering applications received before 30 November 2006.

Preparation for the Licensing Standards

34. Gangmasters could incur a one-off cost to prepare themselves to ensure compliance with the Licensing Standards. As in the Rules RIA, it is assumed that this preparation will require one person's attention for the equivalent of a full working week (40 hours). It is estimated that the average hourly salary of the person undertaking this work is £14.69. To take account of any additional costs, the calculation is multiplied by 30 per cent (or 1.3).
35. Therefore, based on 100 – 200 gangmasters applying for a licence in Year 1, the one-off cost for preparing for the Licensing Standards is estimated to be £76,388 - £152,776.
36. Assuming 10 – 20 new applications in Years 2 and 3, the one-off cost is estimated to be £7,639 – £15,278.
37. The majority of the conditions set out in the Licensing Standards are obligations required by other legislation that relate to or affect the conduct of a gangmaster. As they are currently required to comply with this legislation, no new burden is being recreated. For additional obligations in the Gangmasters (Licensing Conditions) Rules that will apply may impose a cost. However, it is not possible to identify these costs, although they are estimated to be minimal.

Option 2

38. The estimated costs for option 2 are same as option 1. However, the licence conditions for option 2 are tailored to the nature of work for gathering shellfish, for example with specific health and safety requirements. Without these additional conditions, workers could be exposed to potentially significant risks.

Small Firms Impact Test

39. It is estimated over 95 per cent of those who will be required to be licensed are either individual or Small to Medium Sized Enterprises (SMEs).
40. Initial discussions with those affected have indicated general approval for licensing. Further soundings indicated broad acceptance of the proposed coverage of the licence

conditions and licence fee level. However, there were some reservations that the Application Inspection fee level could deter some gangmasters from applying for a licence. The GLA feels this is no different to the situation that pertains in agriculture.

Competition Assessment

41. It is believed that no gangmaster in the shellfish-gathering sector has more than a 10 per cent share of the market. No one firm has a dominant share of the market. It is estimated that over 90 per cent of gangmasters have a turnover of less than £1 million a year.
42. The major cost to gangmasters from the introduction of licensing is the licence fee and Application Inspection charge. Gangmasters who operate on a small scale will have greatest concern over their ability to pay the licence and inspection charge. However, adopting a banded approach will ensure the amount the gangmaster pays reflects the size of the operation. It is not believed that this will have a significant effect.
43. The licence conditions should not lead to higher set up costs for new or potential gangmasters compared with the costs for existing gangmasters. The licence fee is the same for existing and new gangmasters. The licence conditions would not lead to higher ongoing costs for new gangmasters compared with existing gangmasters.
44. Furthermore, the market is not characterised by rapid technological change. It is not believed that the changes will restrict the ability of gangmasters to choose price, range or location of workers.

Social and Environmental Impact

45. The proposals are not expected to have any social or environmental costs or benefits.

Race Equality Impact Assessment

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

Enforcement and Sanctions

47. 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. Defra has delegated the enforcement function to the GLA.
48. The maximum penalties for the principle offences of operating without a licence and for using an unlicensed gangmaster are; a sentence of ten years imprisonment and a fine of up to £5,000, and a sentence of one year imprisonment and a fine of up to £5,000, respectively. The Department for Constitutional Affairs was consulted about the nature and scale of the offences when the Act was drafted.

49. These offences as they apply in the shellfish-gathering sector will be introduced on 6 April 2007.
50. The GLA will also inspect licence holders to check compliance. These inspections will be targeted according to risk. This will be assessed using intelligence available to the GLA including information provided by Government enforcement agencies.

Implementation and Delivery Plan

51. An amendment will be made to the Gangmasters (Licensing Conditions) Rules 2006. This is subject to negative resolution procedures. The amendment will be laid in Parliament in September 2006. They will come into force at the beginning of October 2006. Gangmasters operating in the shellfish gathering sector will not be able to apply for a licence until the amended Rules are in force.

Monitoring and Review

52. As stated in the Act RIA, the operation of the licensing scheme will also be reviewed every 5 years. The review will take the form of an independent external audit.

Summary

53. The GLA recommends adopting Option 2 and introducing conditions tailored to the risks inherent in the shellfish-gathering sector. The updated Licensing Standards are at Annex A

Contact

For further information, please contact: David Nix (david.nix@gla.gsi.gov.uk, 0115 900 8964).

Declaration

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



Paul Whitehouse
Chair, Gangmasters Licensing Authority

Annex A – Updated Licensing Standards for Gangmasters Operating in the Shellfish Gathering

The symbols in the table indicate the categories of non-compliance and what is expected to demonstrate compliance. The categories of non-compliance are:

- **Critical (C):** most serious category of non-compliance (30 Points)
- **Major (M):** major non-compliances, but less than critical (8 Points)
- **Reportable (R):** significant non-compliances, which may be reported to other Government Departments or Agencies (4 Points)
- **Correctable (Co):** less severe non-compliances than above (2 Points)

GLA Licensing Standard			Applicable for supply of workers for shellfish gathering	Applicable for those who use workers for shellfish gathering
Licensing Standard 1: Possession of valid licences				
An inspection will seek to assure that:				
1.1	C	A current GLA licence to operate as a gangmaster in issue (N.B. this applies to post issue licence holders and their sub-contractors only, not new applicants) and the licence holder remains “fit and proper” to hold it.	Yes	Yes
1.2	Co	Licence details are up to date with all relevant changes of circumstances notified within proper timescales.	Yes	Yes
1.3	Co	The licence holder and any person named or otherwise specified on the licence must provide: <ul style="list-style-type: none"> • His Unique Reference Number (URN) to the labour user when he enters into arrangements to supply workers or services; • On demand, his URN to any workers supplied by him to a labour user; • On demand, his licence number to any worker used by him; and • On demand, details of any Additional Licence Conditions to the labour user or any worker supplied or used by him. 	Yes	Yes
1.4	C	Where a permit or licence for shellfish gathering is required, the gangmaster must ensure that their workers comply with that permit or licence.	Yes	Yes

GLA Licensing Standard			Applicable for supply of workers for shellfish gathering	Applicable for those who use workers for shellfish gathering
Licensing Standard 2: Payment of Wages, Tax, National Insurance, VAT: Improper Deductions and Allied Matters				
An inspection will seek to assure that:				
Proper systems are in place for collection of Tax / NI / VAT				
2.1	M	If the gangmaster employs workers, there is evidence that the gangmaster is registered as an employer with HM Revenue and Customs and has a PAYE number.	If applicable	If applicable
2.2	M	Where applicable, deductions from workers' pay of Income Tax and National Insurance are accurate, appropriate and paid to HMRC.	If applicable	If applicable
2.3	R	If the gangmaster business exceeds the VAT threshold, there is documentary evidence that it is registered with HMRC and charges and pays VAT.	If applicable	If applicable
Improper Deductions / Withholding of Wages				
2.4	Co	Where applicable, there is evidence that the gangmaster has an accurate payroll system in place whether in a paper or electronic form.	If applicable	If applicable
2.5	M	Where applicable, deductions from wages, other than those legally required, are made (e.g. for transport), there is evidence on file of workers' written consent to those deductions.	If applicable	If applicable
2.6	M	[Scotland - agricultural workers only⁵: No deductions from wages are made, other than those legally allowed, and any other payments being made by workers outwith the wages system to the Labour Provider are supported by evidence on file of workers' written consent.]	If applicable	If applicable
2.7	M	The gangmaster has not withheld or threatened to withhold payment to any worker on the following grounds:		

⁵ Scottish provisions apply only to workers engaged in **agriculture** (the definition of which also includes horticulture, some fish farming and, through case law, packaging produce grown within the same business enterprise). What it does not include is most fish processing, shellfish gathering and secondary packaging/processing where National Minimum Wage Rules apply.

GLA Licensing Standard			Applicable for supply of workers for shellfish gathering	Applicable for those who use workers for shellfish gathering
		<ul style="list-style-type: none"> Non-receipt of payment from the Labour User. 	Yes	No
		<ul style="list-style-type: none"> The worker failing to prove that he has worked during a particular period of time (although the licence holder can satisfy themselves that the worker did carry out the work using other means). 	Yes	Yes
		<ul style="list-style-type: none"> The worker only having worked during the period to which the payment relates. 	Yes	Yes
		<ul style="list-style-type: none"> Any matter within the control of the gangmaster. 	Yes	Yes
Minimum Wage in Payment				
2.8	C	Where applicable, the worker is paid at least the national minimum wage, taking into account the rules on accommodation charges.	If applicable	If applicable
Benefits Paid (e.g. Sick Pay, Paid Annual Leave Entitlement)				
2.9	M	Where applicable, there is evidence that all workers receive paid annual leave entitlement, and any of the other benefits they are entitled to. Records of any paid annual leave entitlement, statutory sick pay, statutory paternity pay, statutory maternity pay and statutory adoption pay are kept on workers' files.	If applicable	If applicable
Wage Slips Provided				
2.10	M	Where applicable, there is evidence that workers have been provided with itemised accurate payslips for each pay period showing at least their Income Tax, National Insurance payments and other authorised deductions.	If applicable	If applicable
Licensing Standard 3: Debt Bondage, Harsh Treatment or Intimidation of Workers				
<p>Guidance: The GLA will take a very serious view of any evidence of abuse against workers in the following categories. Employment must be freely chosen and no one must be retained against their will, whether or not there is a debt owing.</p> <p>If a worker is loaned money by the gangmaster to meet travel or other expenses in order to take up a position, they must be</p>				

GLA Licensing Standard			Applicable for supply of workers for shellfish gathering	Applicable for those who use workers for shellfish gathering
<p>provided with details in writing of the amount loaned and the agreed repayment terms.</p> <p>If loan repayments are deducted from workers' wages, they must give their written permission for this to be done.</p> <p>Workers (including those whose first language is not English) should be aware of how to seek redress or make a complaint where there has been harassment. There should be no evidence that a gangmaster does not deal with such cases properly.</p>				
An inspection will seek to assure that:				
Unfair Treatment				
3.1	C	Workers are not subjected to physical or mental mistreatment.	Yes	Yes
Existence of any Bonded Debt: for Travel, Unearned Wages, Job Transfer				
3.2	C	There are no debts to the gangmaster that prevent a person freely seeking other employment.	Yes	Yes
3.3	M	Any debts properly entered into, or agreed recoveries from wages, are in writing and do not seek to cover more than the amount agreed or the recoveries allowed.	Yes	Yes
3.4	M	No worker is disadvantaged from taking up permanent employment by the imposition of a transfer fee other than that allowed in regulations.	Yes	No
3.5	R	A worker is not penalised for giving notice, nor does the worker have to pass on details of any new employment.	Yes	Yes
Employment Freely Chosen				
3.6	C	A person has freely chosen that employment and not because they were kept against their will and are free to leave their employment/job without incurring (or fear of incurring) a penalty.	Yes	Yes
Passports / Identity not Retained				
3.7	C	Workers are not required to surrender identity papers such as passports, beyond initial illegal working checks, for retention.	Yes	Yes

GLA Licensing Standard			Applicable for supply of workers for shellfish gathering	Applicable for those who use workers for shellfish gathering
Harassment, Abuse, Complaints Procedures				
3.8	Co	Disciplinary matters or complaints are properly dealt with by the gangmaster.	Yes	Yes
Confidentiality				
<p>Guidance: The Data Protection Act as well as the gangmaster's duty to safeguard workers' interests, requires careful handling of any confidential information. Generally the written consent of the worker must be obtained before passing on any personal information to others. Certain statutory bodies (including the GLA) have the power to ask for records, examine them, copy them or even retain them.</p> <p>It cannot be made a condition of employment that they give that consent.</p>				
3.9	R	A gangmaster does not disclose information relating to a worker, without the prior consent of that worker, except:		
		<ul style="list-style-type: none"> for the purposes of any legal proceedings (including arbitration) 	Yes	Yes
		<ul style="list-style-type: none"> in the case of a worker who is a member of a professional body, to the professional body of which they are a member 	Yes	Yes
		<ul style="list-style-type: none"> for the purposes of apprehension or prosecution of offenders 	Yes	Yes
		<ul style="list-style-type: none"> for the purposes of national security or 	Yes	Yes
		<ul style="list-style-type: none"> as required by any other enactment of law 	Yes	Yes
3.10	Co	Data and records are kept securely.	Yes	Yes
Licensing Standard 4: Workers' Accommodation				
<p>Guidance: Any accommodation provided, or effectively provided, by the gangmaster should conform to current legislation. There should be no evidence of poor or overcrowded conditions or failure to conform to local housing regulations on Housing of Multiple Occupation. Any charges for accommodation must be compliant with the national and agricultural minimum wage regulations.</p>				
An inspection will seek to assure that:				
4.1	M	No under-18 year-olds are compelled to stay away from home for work purposes.	Yes	Yes

GLA Licensing Standard			Applicable for supply of workers for shellfish gathering	Applicable for those who use workers for shellfish gathering
4.2	M	Where workers live in accommodation provided by the gangmaster, they are allowed to find suitable alternative accommodation after giving an agreed notice period.	If applicable	If applicable
4.3	C	<p>Where workers live in accommodation provided by the gangmaster, it contains appropriate facilities (e.g. water, power, heating, bedding, sanitation) and is safe for its inhabitants. The GLA will expect to see evidence that any electrical equipment provided for cooking, heating, recreational or similar use is being properly maintained and that tenants have been supplied with copies of the most recent gas safety certificate as required by the current Gas Safety (Installation and Use) Regulations.</p> <p>[Scotland only Where appropriate, accommodation is licensed or registered in accordance with the Antisocial Behaviour etc (Scotland) Act 2004 (Part 8, registration of landlords) or the Civic Government (Scotland) Act 1982 (Licensing of Houses in Multiple Occupation) Order 2000.]</p> <p>[England, Wales only There should be no evidence that the room and space standards set out in the Housing Act 1985 and 2004 and associated secondary legislation are breached nor that there is evidence of misuse of Houses of Multiple Occupation (HMO).]</p>	If applicable	If applicable
Licensing Standard 5: Hours Worked, Working Time Regulations, etc				
<p>Guidance: An accurate record of hours worked by workers must be kept and made available for inspection. An opt out of the Working Time Regulations 1998 (as amended) must be a free choice by the worker and substantiated by a written, signed agreement. There must be no evidence that workers are being exploited as a consequence of failure to observe these provisions.</p> <p>The gangmaster must allow workers to take the breaks to which</p>				

GLA Licensing Standard			Applicable for supply of workers for shellfish gathering	Applicable for those who use workers for shellfish gathering
they are entitled during the working day.				
An inspection will seek to assure that:				
5.1	M	Where the gangmasters employs workers, they are allowed to take statutory breaks.	If applicable	If applicable
5.2	M	Where the gangmasters employs workers, there is evidence that any workers working in excess of 48 hours per week have freely signed an opt-out.	If applicable	If applicable
5.3	M	Where applicable, accurate records are kept of days and hours worked for all workers.	If applicable	If applicable
Licensing Standard 6: Health and Safety Issues				
Safe working in estuaries and tidal areas when gathering shellfish				
Guidance: Gangmasters should be familiar with the HSE current guidelines posted on the HSE website: www.hse.gov.uk/pubns/estuary.htm				
An inspection will seek to assure that:				
Supervision				
6.1	C	Gangmasters must ensure that each group of workers has a recognised and competent supervisor / group leader. Any appointed person must: <ul style="list-style-type: none"> • Be familiar with the use of equipment and procedures required by the Standards specified below; • Be able to communicate directly with workers under his / her control; • Accompany the workforce at all times when working below the high tide mark. 	If applicable	Yes
Information				
6.2	C	As a minimum, the gangmaster and supervisor / group leader must ensure workers under their control have: <ul style="list-style-type: none"> • Local tide tables and an accurate watch. • Knowledge of current and forecast weather conditions, eg fog/flooding. • Knowledge of local conditions, eg quicksands, shifting gullies, rivers in flood, the nature and speed of the tide. 	If applicable	Yes
Equipment				

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6.3	C	<p>The gangmaster and supervisor / group leader must ensure workers under their control have:</p> <ul style="list-style-type: none"> • A suitable communications device - either a VHF marine band radio or a mobile telephone according to reception. Batteries should be fully charged and the devices should be kept dry. • A location device, preferably a Global Positioning Unit (GPS) and/or compass. • High-visibility clothing which is both warm and weatherproof. • Emergency equipment - whistles in case of fog/mist, and flares. 	If applicable	Yes
Planning				
6.4	C	<p>When planning work, the gangmaster and supervisor / group leader must:</p> <ul style="list-style-type: none"> • Have emergency telephone numbers for the Maritime and Coastguard Agency and other emergency services. • Recognise that it is vital to leave enough time to get workers and vehicles ashore safely. Extra time must be allowed for possible problems. • Be able to identify and cope with emergencies such as fog and quicksands. • Recognise that working at night creates additional risks and requires appropriate and special precautions. • Avoid lone working where possible. • Notify the Maritime and Coastguard Agency Rescue and Coordination Centre of times going out/coming back, where the work is planned to take place, the size of the group, the licence holder's URN and contact details. • Make sure that groups of workers are not too large. Group leaders must be able to adequately supervise all workers. 	If applicable	Yes
Getting to the work area				
6.5	C	Vehicles used to access the fishery must be suitable for the work area, e.g. tractors,	If applicable	Yes

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		ATVs or similar.		
6.6	C	Tractors must be fitted with approved cabs or rollover protection.	If applicable	Yes
6.7	C	Where ATVs are used, the drivers should be competent and specifically trained in their use. A suitable and sufficient risk assessment should have been carried out to determine where and in what circumstances drivers should be provided with and should wear appropriate safety helmets.	If applicable	Yes
6.8	C	All vehicles should be roadworthy and properly maintained and should carry enough fuel for emergencies.	If applicable	Yes
6.9	C	Where trailers pulled by tractors are used to carry passengers, they must be fitted with headboards, tailboards and suitable side protection to prevent passengers falling off. Passengers should not be carried in tractor cabs (unless the manufacturer has provided a second seat), on tractor steps or on the drawbar. Normally ATVs should not be used to carry more passengers than specified in the manufacturer's handbook.	If applicable	If applicable
Lifejackets and liferafts				
<p>Guidance: Gangmasters should plan and take necessary precautions to ensure, allowing for contingencies, that workers are ashore before the possibility of being cut off by the incoming tide can arise. There should therefore be no need to take additional precautions such as the provision and use of lifejackets or liferafts. Current guidelines do not preclude their use for emergencies only but do lay down the minimum standards for such equipment. Any equipment provided should comply with the specified standards.</p>				
6.10	C	Where applicable, users of lifejackets and liferafts must be properly trained and instructed in their use. They must be able to operate them in an emergency. The devices must also be routinely checked (daily, weekly and monthly) and maintained in accordance with the supplier's instructions.	If applicable	If applicable

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Use of boats				
6.11	C	Any boat used for accessing fisheries and transporting persons must be an MCA certificated workboat.	If applicable	If applicable
Health and Safety issues concerning the supply of workers				
Guidance: The allocation of responsibility for health and safety depends on the relationship between the gangmaster supplying workers and the Labour User.				
An inspection will seek to assure that:				
6.12	M	The gangmaster supplying workers has co-operated with the Labour User to ensure that: <ul style="list-style-type: none"> responsibility for managing the health and safety of workers has been agreed and assigned; and that the health and safety risks to which they may be exposed at work are properly controlled. 	Yes	No
6.13	M	The gangmaster supplying workers has co-operated with the Labour User to ensure that responsibility for: <ul style="list-style-type: none"> The provision of information to workers about any special qualifications or skills they require to do the work for which they have been employed has been agreed and assigned. Any health and safety training has been agreed and assigned; and that The workers provided have received any necessary health and safety (including induction) training appropriate to the site(s) at which they are working and the work they have been employed to do. The information and training should be comprehensible. 	Yes	No
Additional Issues				

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6.14	R	No charge is made for health and safety training required to carry out work and any time spent on training (including any training arranged outside of an employee's normal working hours) is treated as an extension of time at work.	Yes	Yes
6.15	M	Evidence that drivers or workers operating vehicles and mobile machinery are not under age. They should also hold a current, relevant licence or certificate that is required by legislation.	Yes	Yes
Licensing Standard 7: Recruitment and Contractual Arrangements				
<p>Guidance: Recruitment must be fair and open and non discriminatory in accordance with UK legislation.</p> <p>There must be written terms of engagement whether a contract of employment or a contract for services with workers and these must not be changed without their written consent. Workers should understand the terms on which they have been taken on including procedures to be followed if they are found to be unsatisfactory or unsuitable for the work for which they were hired.</p> <p>The agreement between the Labour User and the Labour Provider should be in writing (see Appendix 1, paragraph 2).</p>				
An inspection will seek to assure that:				
Recruitment				
7.1	R	Applicants for employment are not discriminated against when employment is offered.	Yes	Yes
7.2	Co	<p>A Labour Provider will not have supplied a worker to a Labour User unless they have confirmed:</p> <ul style="list-style-type: none"> • The identity of the worker. • That the worker has the experience, training, qualifications and any authorisation which the Labour Provider or Labour User considers is necessary, or which is required by law or by any professional body. • The worker is willing to work in the position which the Labour User seeks to 	Yes	No

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		fill. <ul style="list-style-type: none"> Workers are not charged a finder's fee for finding them work. They are not obliged to use the services of the Licence Holder to hire or purchase goods or services as a condition of finding work. 		
Terms and Conditions				
<p>Guidance: Terms and conditions should be in a format that can be easily read and understood and workers should be given the opportunity to raise concerns or queries in relation to those terms before being supplied to a Labour User.</p> <p>A gangmaster may not enter into a contract with a Labour User on a worker's behalf or on behalf of the Labour User with the worker, without that worker's express permission.</p>				
7.3	M	<p>There is evidence that all workers who have been employed continuously for one month or more under a contract of employment have a written statement of employment particulars. Or, if workers are engaged under contracts for services, there is evidence that these are agreed and provided to the workers before work commences.</p> <p>The terms that must be agreed include:</p> <ul style="list-style-type: none"> Whether the worker is or will be supplied by the licence holder under a contract of employment, or for services, and the terms and conditions that will apply. An undertaking to pay the worker for any work carried out The length of termination period the worker is required to give and entitled to receive, if any. Either the worker's pay rate, or the minimum rate to be expected. The intervals at which the earnings will be paid; and details of any entitlement to paid holidays, SSP and other benefits. 	Yes	Yes
			Yes	Yes
			Yes	Yes
			Yes	Yes
			Yes	Yes
			Yes	Yes

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7.4	M	There are no changes made either to contracts of employment or contracts for service without written consent by the employee.	Yes	Yes
7.5	Co	No gangmaster may introduce a worker for direct employment by a Labour User and continue to pay them (or make arrangements for such payment).	Yes	No
Licensing Standard 8: Sub-contracting				
<p>Guidance: A gangmaster who sub-contracts becomes a Labour User for the purposes of the Gangmasters (Licensing) Act and must ensure that the sub-contractor he engages is licensed by the GLA.</p> <p>The gangmaster cannot sub-contract any responsibilities with a Labour User to another gangmaster without the prior consent of that Labour User, which must be in writing.</p> <p>A Sub-contracting gangmaster must provide the Labour User (including the gangmaster to whom they are sub-contracting) with their URN (Unique Reference Number) as well as any other licence details (including Additional Licence Conditions, if any), if so requested.</p> <p>They must keep proper records as detailed in Appendix 1 (Record Keeping).</p>				
An inspection will seek to assure that:				
8.1	C	Any sub-contractors used must be properly and currently licensed by the GLA	Yes	Yes
8.2	M	The names and any other names of any sub-contractor(s) used are recorded as well as details of workers provided and the number of hours worked by them as laid down in Appendix 1, paragraph 2.	Yes	Yes
8.3	Co	There is documentary evidence of the agreement between the gangmaster and all sub-contractors.	If applicable	Yes
8.4	Co	The gangmaster has the worker's permission before transferring them to another gangmaster.	If applicable	Yes

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Licensing Standard 9: Identity Issues, Under-Age Working				
<p>Guidance: The identity of all workers must be known to the gangmaster. Proper records must be maintained which identify each worker and the hours they work. The GLA Licensing Conditions require that the gangmaster must ensure that those workers supplied can be identified by the Labour User. See Appendix 1, paragraph 1 concerning the records that must be kept.</p> <p>The law prohibits under-age working. Any offences identified will be treated very seriously and passed on to the relevant Authorities.</p>				
An inspection will seek to assure that:				
9.1	M	Records on workers' files include their name, date of birth, address, and, if employing the workers, the NI number.	Yes	Yes
Proof of Age (Underage Working)				
9.2	M	Details of any work activities, including times and dates worked, carried out by children and young workers are held on file.	If applicable	Yes
9.3	R	There are copies of adequate and suitable risk assessments available where young persons are employed.	Yes	Yes
9.4	M	Children and/or young persons are only carrying out work permitted by law.	Yes	Yes
Licensing Standard 10: Legality and Rights of Workers				
<p>Guidance: Only those who are legally able to work may be employed. It is essential that Labour Providers ensure that proper records are kept and checks made in line with Home Office guidance.</p> <p>To demonstrate compliance with 10.1 (below), Labour Providers should be able to produce copies of supporting documentation that confirms a person's entitlement to work in the UK (Copies means a photocopy or recording of the document electronically). The specified documents in question are detailed in the:</p> <ul style="list-style-type: none"> • Immigration (Restrictions on Employment) Order 1996 (for workers employed from 27 January 1997 to 30 April 2004). • Immigration (Restrictions on Employment) Order 2004 (for workers employed since 1 May 2004). 				

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Labour Providers must respect a worker's right to belong to a Trade Union and to participate in its activities.				
An inspection will seek to assure that:				
Legality of Workers (Section 10), Section 8 of the Asylum and Immigration Act 1996				
Fulfilled				
10.1	M	All workers are legally entitled to work in the UK. Employers will be required to show they have complied fully with Section 8 of the Asylum and Immigration Act 1996 in relation to workers employed since January 1997.	Yes	If applicable
10.2	R	There should be no evidence of student workers (who generally have the limited right to work as part of their leave to remain in the UK) working in excess of 20 hours per week during term time.	Yes	If applicable
Trade Union Matters				
10.3	M	Workers are not prevented from taking Trade Union membership and are not penalised for doing so.	Yes	Yes
10.4	R	A gangmaster must not supply a worker to carry out the duties of a worker involved in an official industrial dispute or to perform the duties of any other worker employed by the Labour User who has replaced the worker on strike.	Yes	No
Appendix 1: Record Keeping				
<p>Guidance: The Licence Conditions attached to the main Gangmasters (Licensing) Act 2004 requires in addition to the above provisions, that the Labour Provider keeps the following records. These are appended for information. It is expected that gangmasters will adhere to them. Most are included in the main body of the Licensing Standards, especially Section 8 (Sub-contracting) and Section 9 (Identity Issues). Records may be kept manually or electronically.</p> <p>Any shortcomings in this section alone will not count towards the scoring of errors as part of any inspection, except where they appear in the main body of the Licensing Standards above.</p>				
1. Every gangmaster must record, as soon as reasonably practicable, the following details of workers:				

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<ul style="list-style-type: none"> The date the terms between the licence holder and worker were agreed. 	Yes	Yes
<ul style="list-style-type: none"> The worker's name, address and date of birth. 	Yes	Yes
<ul style="list-style-type: none"> Any terms which apply or will apply between the licence holder and the worker, and any document recording any variation. 	Yes	Yes
<ul style="list-style-type: none"> Any details of the worker's training, experience or qualifications and any authorisation to undertake particular work (and copies of any documentary evidence of the same obtained by the gangmaster). 	Yes	Yes
<ul style="list-style-type: none"> Details of any requirements specified by the worker in relation to taking up employment. 	Yes	Yes
<ul style="list-style-type: none"> The names of Labour Users or sub-contractors to whom the worker is supplied. 	Yes	No
<ul style="list-style-type: none"> Details of any resulting engagement and the date from which it takes effect. 	Yes	No
<ul style="list-style-type: none"> The date the contract was terminated (where applicable). 	Yes	Yes
<ul style="list-style-type: none"> Details of any enquiries made about the worker and the position concerned with copies of all relevant documents. 	Yes	Yes
<p>2. Every licence holder must record, as soon as reasonably practicable, the following details relating to Labour Users:</p>		
<ul style="list-style-type: none"> The date terms are agreed between the licence holder and the Labour User. 	Yes	No
<ul style="list-style-type: none"> The Labour User's name and address, and location of the place of work if different. 	Yes	No
<ul style="list-style-type: none"> Details of any sub-contractors. 	Yes	No
<ul style="list-style-type: none"> The duration or likely duration of the work. 	Yes	No
<ul style="list-style-type: none"> Any experience, training, ability, qualifications, and authorisation required by the licence holder or Labour User by law, or by any professional body; and any other conditions attaching to the position(s) the Labour User seeks to fill. 	Yes	No
<ul style="list-style-type: none"> The terms offered in respect of the position(s) the Labour User seeks to fill. 	Yes	No
<ul style="list-style-type: none"> A copy of the terms between the licence holder and the Labour User, and any document recording any variation. 	Yes	No
<ul style="list-style-type: none"> The names of workers supplied. 	Yes	No
<ul style="list-style-type: none"> Details of enquiries about the Labour User and the position they seek to fill, with copies of all relevant documents and dates of their receipt. 	Yes	No
<ul style="list-style-type: none"> The details of each resulting engagement and date from which it takes effect. 	Yes	No
<ul style="list-style-type: none"> Dates of requests by the gangmaster for fees or other 	Yes	No

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payment from the Labour User and of receipt of such fees or other payments, and copies of statements or invoices.		
3. Every gangmaster must record, as soon as reasonably practicable, the following details relating to other gangmasters:		
<ul style="list-style-type: none"> Names of any other licence holders whose services the licence holder uses, and details of enquiries made to ascertain that the other licence holder is licensed. 	Yes	No
<ul style="list-style-type: none"> Date and copy of any agreement to sub-contract. 	Yes	No
<p>These records must be kept for at least one year. The records may be kept at any premises a gangmaster uses for or in connection with the carrying on of his business, or elsewhere. If kept elsewhere the licence holder must ensure that they are readily accessible and capable of being delivered to the licence holder's UK premises or the Authority within two working days. All records may be kept in written or electronic form.</p>	Yes	Yes