

EXPLANATORY MEMORANDUM TO
THE GANGMASTERS (LICENSING CONDITIONS) (No. 2) (AMENDMENT)
RULES 2007

2007 No. 401

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 instrument makes changes to the fee levels payable to the Authority.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative Background**
 - 4.1 The Gangmasters (Licensing Conditions) (No. 2) (Amendment) Rules 2007 are made under the Gangmasters (Licensing) Act 2004. The Act established the Gangmasters Licensing Authority to licence gangmasters operating in the agriculture, shellfish gathering and food processing and packaging sectors. Under section 8 of the Act, the Authority has the power to make rules to require the payment of fees.
5. **Extent**
 - 5.1 This instrument applies to all of the United Kingdom.
6. **European Convention on Human Rights**
 - 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.
7. **Policy background**
 - 7.1 As a public body, the Authority is expected to recover its operating costs through licence fees. For the financial year 2006 – 07, the Authority recovered its costs through the licence fee and charge for application inspections. This was set through the Gangmasters (Licensing Conditions) Rules 2006. The Full RIA accompanying these Rules estimated the fee and charge levels to apply for financial year 2007 – 08, based on a forecasted budget and assumed number of licence holders and applicants.

The Authority consulted current licence holders and stakeholders (a total of 1894 consultees) on the proposed fee and charge levels for 2007 – 08 between 27 November 2006 and 8 January 2007. The proposals were based on achieving full cost recovery for the Authority against the budget for 2007 – 08.

- 7.2 21 written responses were received. A summary of responses is available on the Authority’s website (www.gla.gov.uk). The key points raised include:
- Broad support for continuing with four fee bands and using turnover in the regulated sector to determine fee band categories.
 - Support for continuing to conduct and charge for application inspections. Respondents considered it unfair if applicants in 2007 – 08 did not pay for an application inspection where existing licence holders had paid.
 - Concern at the increase in fees, particularly for the smallest businesses.
- 7.3 An important factor in determining the fee level is the volume of applications and whether charges are set. The Authority intends to continue conducting, with associated charges, for application inspections for new application received during 2007 – 08 until a sufficiently robust model risk profile exists to enable the Authority’s Board to consider whether an inspection should be conducted for new applications. The Authority assumes 100 new applications will be subject to an application inspection in 2007 – 08. This approach is in line with consultation responses and allows the fee levels to be revised in light of the addition income generated by the charging for the costs of application inspections. The following levels will apply for 2007 – 08:

Annual turnover in regulated sector	Licence band	Licence fee for new applications and renewals	Application Inspection charge
>10	A	£9,000	£2,500
>5≤10	B	£4,500	£2,100
>1≤5	C	£1,750	£1,850
≤1	D	£400	£1,600

- 7.4 As the application inspection charge is a one-off cost, the overall cost associated with renewing a licence for 2007 – 08 is significantly reduced compared with the total cost of applying for licence during 2006 – 07 where an application inspection was required.

8. Impact

- 8.1 A Regulatory Impact Assessment 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. The GLA licence period runs from 6 April to 5 April. This Full Regulatory Impact Assessment (RIA) determines the gangmasters licensing scheme fee levels for period 6 April 2007 to 5 April 2008 (hereafter 2007 – 08). The fees will be set through an amendment to the Gangmasters (Licensing Conditions) (No 2) Rules 2006.

Background

2. The GLA seeks to recover its operating costs through fees and income. For the period 6 April 2006 to 5 April 2007 (hereafter 2006 – 07), the GLA recovers its costs by the licence fee and application inspection charge. The levels for 2006 – 07 are:

Annual turnover in regulated sectors	Licence band	2006 – 07 Licence fee level	2006 – 07 Application inspection charge
>10	A	£4,000	£2,500 (plus VAT)
>5≤10	B	£2,000	£2,100 (plus VAT)
>1≤5	C	£750	£1,850 (plus VAT)
≤1	D	£250	£1,600 (plus VAT)

Consultation

3. All applicants, licence holders and stakeholders were consulted from 27 November 2006 to 8 January 2007. 21 replied. A response summary at: www.gla.gov.uk.

Sectors and Groups Affected

4. Licence holders and applicants after 6 April 2007 will be affected. The licence fee level for 2006 – 07 assumed the GLA would receive 1000 applications. Based on the first year of licensing the GLA has estimated the number of renewals or newly issued in 2007 – 08. This assumes:
 - no significant movement of licence holders from one fee band to another for licences issued in 2006 – 07 and renewals in 2007 – 08
 - the numbers in fee bands A and B will remain unchanged
 - there will be 100 new applications in 2007 – 08, split between fee bands C and D. (NB In completing the application form, applicants are asked for their projected turnover for the forthcoming financial year).
 - the number in band D will reduce by 200 (approximately 5 per cent) due to displacement, aggregation or closure of licence holders' businesses

Based on these assumptions, the GLA forecasts:

Fee Band	Total licence holders and applicants 03/11/06	Projected for 31/03/07	Non-renewals during 2007-08	New applications 2007-08	Total projected for 2007-08
A	13	13	0	0	13
B	18	18	0	0	18
C	192	192	0	50	242
D	781	1027	-200	50	877
Total	1004	1250	-200	100	1150

Options

5. In the consultation exercise, the GLA proposed three options.

Option 1

6. Do nothing and continue with the 2006 – 07 levels.

Costs and Benefits

7. Continuing with the 2006 – 07 levels would mean no increase in costs for existing licence holders or potential applicants (although the latter would incur an application inspection fee). However, this would mean a shortfall in revenue. Therefore, the GLA rejects this option.

Option 2

8. Revise the fee levels to recover the forecasted GLA budget for 2007 – 08.

Costs and Benefits

9. Annex A details the GLA operating costs for the financial year 2007 – 08.
10. The GLA intends to continue with four fee bands categorised according to the size of annual turnover in the regulated sectors.
11. Based on the information in Annex A, option 2 proposes:

Annual turnover in regulated sectors (£millions)	Licence band	Proposed licence fee level for 2007 – 08
>10	A	£9,000
>5≤10	B	£4,500
>1≤5	C	£1,750
≤1	D	£600

12. The levels in this option are based on the premise that the GLA will not charge for application inspections after it adopts a risk based approach – i.e. for deciding whether an applicant should or should not have an inspection. Option 2 assumes the GLA Board will approve risk assessing applications by 6 April 2007. For option 2, the budget assumes no income from application inspections for 2007 – 08.
13. For current licence holders who incurred a charge for an application inspection in 2006 – 07, the overall cost associated with renewing a licence for 2007 – 08 is reduced. This table compares the costs associated with the licence fee and application inspection charge for a business in band D:

Costs for 2006 - 07	Costs for 2007 – 08
Licence fee: £250	Licence fee: £600
Application inspection charge: £1,600	No application inspection charge
Total: £1,850	Total: £600
Difference between 2006 – 07 and 2007 – 08: £1,250	

Option 3

14. As for option 2, revise the fee levels to recover the forecasted GLA budget for 2007 – 08. However, option 3 is based charging for application inspections. This assumes the risk based approach will be switched on from 6 April 2007.

Costs and Benefits

15. The number of businesses applying for a licence in 2007 – 08 is estimated to be 100, with in licence bands C and D. For the purposes of option 3, it is assumed 50 per cent of these applicants will require an application inspection and therefore incur a charge. It is assumed these will be in Band D.
16. The charge for an application inspection will remain unchanged from 2006 – 07. Option 3 proposes:

Annual turnover in regulated sectors (£millions)	Licence band	Licence fee level	Proposed 2007 – 08 application inspection charge
>10	A	£9,000	£2,500 (plus VAT)
>5≤10	B	£4,500	£2,100 (plus VAT)
>1≤5	C	£1,750	£1,850 (plus VAT)
≤1	D	£510	£1,600 (plus VAT)

17. As for option 2, for licence holders who paid an application inspection charge in 2006 – 07, the renewal cost for a licence in 2007 – 08 is reduced. The table below compares the licence fee and application inspection charge for a Band D business:

Costs for 2006 - 07	Costs for 2007 – 08
Licence fee: £250	Licence fee: £510
Application inspection charge: £1,600	No application inspection charge
Total: £1,850	Total: £510
Difference between 2006 – 07 and 2007 – 08: £1,340	

Post Consultation - Option 4

18. Following the consultation exercise, the GLA proposes to revise the fee levels to recover the forecasted GLA budget for 2007 – 08. However, option 4 is based on the GLA Board decision (taken on 18 January 2007) not to implement at this stage a risk profile for deciding whether or not to inspect new applicants. Furthermore, the majority of respondents to the consultation exercise considered it would be unfair for those who applied during 2006 – 07 if those applying in 2007 – 08 did not incur costs for an application inspection.

Costs and Benefits

19. In view of the decision to not implement a risk profile at this stage, and in light of the consultation responses received, and the following fee structure for 2007 – 08 is proposed:

Annual turnover in regulated sectors (£millions)	Licence band	Licence fee level	Proposed 07 – 08 application inspection charge
>10	A	£9,000	£2,500 (plus VAT)
>5≤10	B	£4,500	£2,100 (plus VAT)
>1≤5	C	£1,750	£1,850 (plus VAT)
≤1	D	£400	£1,600 (plus VAT)

20. This revised approach assumes 100 new applicants will be inspected, with the associated charge, during 2007 – 08. Based on the assumption that these 100 new applicants will be split between fee bands C and D, the income generated for charging for application inspections is estimated to be £172,500.
21. In comparison to option 3, conducting an additional 50 application inspections will not increase the fixed costs to GLA. This enables the costs for the smallest sized businesses (who also represent over 75 per cent of the total licence holders) to be reduced. The GLA intends to reduce the fee level for band D to £400. This is £100 less than was originally forecast in the Gangmasters (Licensing Conditions) Rules 2006 Full RIA. The charge for an application inspection will remain unchanged from 2006 – 07 levels.
22. The cost associated with renewal for 2007 – 08 is reduced compared with the cost of applying in year 1 where an application inspection was required. The table below compares the licence fee and application inspection charge for a band D business:

Costs for 2006 - 07	Costs for 2007 – 08
Licence fee: £250	Licence fee: £400
Application inspection charge: £1,600	No application inspection charge
Total: £1,850	Total: £400
Difference between 2006 – 07 and 2007 – 08: £1,450	

23. For all options, compliance visits to licensed businesses will **not** attract a fee.

Small Firms Impact Test

24. The proposed licence fee level for 2007 – 08 is an increase on the fee level for 2006 – 07. However, the proposed fee level is in line with the estimated levels for 2007 – 08 presented in the Gangmasters (Licensing Conditions) Rules 2006 Full RIA. The GLA is satisfied that the burden on small business created by the fee levels is proportionate. The fee bands reflect the relative size of the licence holders and potential applicants.

Competition Assessment

25. It is believed no licence holder has more than a 10 per cent share of the market. No one firm has a dominant share of the market. Licence holders and new applicants who operate on a small scale will have greatest concern over their ability to pay the licence fee. However, continuing the banded approach will ensure the amount paid reflects the size of the operation. The licence fee is the same as for licence holders and new applicants. The options for the licence fee are unlikely to have any significant effect on competition.

Enforcement and Sanctions

26. The Act established four criminal offences. The primary offence for operating as a gangmaster without a licence in the agriculture and food processing and packaging sectors commenced on 1 October 2006. It is also an offence to enter into an arrangement with an unlicensed gangmaster for the supply of labour to the agriculture and food processing and packaging sectors. It is anticipated these offences will be commenced for the shellfish gathering sector from 6 April 2007.

Implementation and Delivery Plan

27. The amended Rules are subject to negative resolution procedures. It is anticipated that the Rules, accompanied by an Explanatory Memorandum and the final signed RIA will be laid before Parliament in March 2007. They will come into force at the beginning of April 2006.

Monitoring and Review

28. The Government will conduct a post-implementation review of the licensing scheme in Spring 2007 to ensure the licensing arrangements follow the principles of better regulation. Section 1(2) of the Gangmasters (Licensing) Act 2004 requires the GLA to "to keep under review generally the activities of persons acting as gangmasters" and "to keep under review the operation of this Act". The GLA is initiating a research study with intention of publishing findings in 2008 – 09.

Conclusion

29. The GLA proposes to adopt option 4.

Declaration and Contact

30. I have read the RIA and I am satisfied that the benefits justify the costs. Signed by:



Paul Whitehouse, Chairman, Gangmasters Licensing Authority

31. For further information, please contact: David Nix, GLA, PO Box 8538, Nottingham, NG8 9AF, david.nix@gla.gsi.gov.uk, 0115 900 8964.

Annex A – Forecast Budget for 2007- 08 for options 2 and 3

	2006 – 07 Budget	2007 – 08 Budget
Total pay costs	£1,261,600	£1,301,100
Total non-pay costs	£1,467,100	£751,400
Total costs	£2,728,700	£2,052,500
Amount attributable to enforcement (funded by Defra)	£658,000	£901,500
Set up costs (funded by Defra)	£747,000	–
Option 2		
Income generated from application inspection charges	£850,000	–
GLA operating costs to be recovered from licence fees	£473,700	£1,151,000
Option 3		
Income generated from application inspection charges	£850,000	£80,000
GLA operating costs to be recovered from licence fees	£473,700	£1,071,000
Option 4		
Income generated from application inspection charges	£850,000	£172,500
GLA operating costs to be recovered from licence fees	£473,700	£978,500

The GLA seeks to recover the costs designated as operating costs. Enforcement and set up costs are funded by Defra.

The Gangmasters (Licensing Conditions) Rules 2006 Full RIA forecasted a budget for the financial year 2007 – 08 of £966,687 for the GLA’s operating costs to be recovered through licence fees. The difference in the total operating costs to be recovered in 2007 – 08 as forecasted in this document is £184,313. This difference is due to a combination of a reduction in amount funded centrally by Defra and changes to the cost structure in the GLA.

