

EXPLANATORY MEMORANDUM TO
THE GANGMASTERS (LICENSING CONDITIONS) RULES 2009

2009 No. 307

1. This explanatory memorandum has been prepared by the Gangmasters Licensing Authority and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 This instrument sets out rules relating to applications for licences to act as gangmasters, conditions which apply to such licences and applicable fees. It revokes and replaces the previous set of rules.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative Context**
 - 4.1 This instrument is made under the Gangmasters (Licensing) Act 2004. The Act established the Gangmasters Licensing Authority (“the Authority”) to operate a licensing scheme for operating in agriculture, shellfish gathering and associated processing and packaging.
 - 4.2 Under section 8 of the Act, the Authority has the power to make rules to establish the necessary arrangements to operate the licensing scheme, the conditions that will apply and the licence fees and charges payable.
 - 4.3 Section 27 of the Gangmasters (Licensing) Act 2004 disapplies the Employment Agencies Act 1973 for the sectors regulated by the Authority. To ensure consistency across all sectors, these Rules replicate the relevant obligations in the Conduct of Employment Businesses and Employment Agencies Regulations 2003 (S.I. 2003/3319), as amended by the Conduct of Employment Businesses and Employment Agencies (Amendment) Regulations 2007 (S.I. 2007/3575).
 - 4.4 In order to reflect changes made by S.I. 2007/3575, this instrument revokes and replaces the Gangmasters (Licensing Conditions) (No.2) Rules 2006 (S.I. 2006/2673) and the Gangmasters (Licensing Conditions) (No.2) (Amendment) Rules 2008 (S.I. 2008/638).
5. **Territorial Extent and Application**
 - 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 The Authority started operating the licensing scheme in April 2006 for agriculture and food processing and packaging, with the offences for operating without a licence and using an unlicensed gangmaster under the 2004 Act commencing later that year. The licensing scheme was implemented for shellfish gathering in October 2006, with associated offences commencing in April 2007.
- 7.2 The Authority's objective is to protect vulnerable workers and level the playing field for legitimate businesses. The conditions for the licensing scheme are covered by these Rules plus relevant requirements in existing legislations. These obligations are drawn together in the Authority's "Licensing Standards" (a copy of the standards is included in the attached Impact Assessment). A first fundamental review of these standards has now been completed.
- 7.3 The Rules set out the process for applying for a licence, together with the conditions which apply to such licences. Those conditions include relevant provisions corresponding to those that would apply under the Employment Agencies Act 1973 Act if section 27 of the Gangmasters (Licensing) Act were not in force. These include the recent changes introduced in the Conduct of Employment Businesses and Employment Agencies (Amendment) Regulations 2007:
- Where licence holders provides additional services to workers, paragraph 8(2) in the Schedule gives the worker the right to opt out of the service after giving a period of notice.
 - Paragraph 20(5) in the Schedule provides a measure to reduce administrative burdens exempts licence holders from providing detailed information to labour users and workers where the worker's assignment lasts for five working days or less.
- 7.4 This instrument also sets out fees payable for applying and renewing a licence. In previous years, the Authority has recovered its total operating costs (less enforcement costs which are funded by Defra).
- 7.5 Following a review of the Authority's fee structure during 2008, HM Treasury have determined that in future the costs to recovered should be based purely on the costs associated with issuing and maintaining licences. This means the Authority's back office functions and activity not directly related to licensing work will no longer be recovered through licence fee income. Based on this revised methodology for calculating fee levels, the fees for 2009-10 are significantly reduced for larger sized businesses.
- 7.6 Furthermore, the application inspection fee is separated from the licence fee to further enhance transparency on how the fees relates to the work undertaken by the Authority. Although less income will be generated by fees, the Authority's total budget will be unaffected. HM Government will continue to maintain the Authority's budget regardless of the reduced contribution to the Consolidated Fund.

- 7.7 The following fees will be payable for applications and renewals of licences for the financial year 2009-10:

Annual turnover in the licensed sectors	Fee Band	Application or Renewal Fee	Inspection Fee
£10 million or more	A	£2,600	£2,900
From £5 million to less than £10 million	B	£2,000	£2,400
From £1 million to less than £5 million	C	£1,200	£2,150
Less than £1 million	D	£400	£1,850

- 7.8 The table below sets out the fee payable during 2008-09:

Annual turnover in the licensed sectors	Fee Band	Application Fee (which incorporates the Inspection Fee)	Renewal Fee
£10 million or more	A	£12,900	£10,000
From £5 million to less than £10 million	B	£7,400	£5,000
From £1 million to less than £5 million	C	£4,050	£1,900
Less than £1 million	D	£2,250	£400

8. Consultation outcome

- 8.1 The Authority consulted on its Licensing Standards review between 4 August and 24 October 2008. 1,368 licence holders and relevant stakeholders were consulted. 24 responses were received. The responses were broadly in favour of the proposed changes to the Rules.
- 8.2 The Authority consulted on the 2009-10 licence fees from 17 November 2008 until 2 January 2009. 1,376 people and businesses were consulted, including all licence holders and stakeholders. 10 responses were received. The responses broadly welcomed the proposed levels. Some expressed concern on the impact the band D fee could have on micro-sized businesses. The Authority has made every effort to keep costs down. Furthermore, the band D renewal fee of £400 is remaining unchanged for a third year. In real terms, this represents a saving for those licence holders. The application inspection charge for band D businesses of £1,850, which reflects the costs associated with the inspection, is a one-off cost. In subsequent years, the licence holder only has to pay the renewal licence fee. The Authority's experience of issuing licences has also shown the very smallest businesses can accommodate this charge.

9. Guidance

- 9.1 The conditions for the licensing scheme are published in the Authority's "Licensing Standards". The Authority has written to existing licence holders and worked closely with industry stakeholders to publicise the revised version of the Licensing Standards. Copies of the Licensing Standards have been presented to the libraries of both Houses, and are available from the Authority's website at www.gla.gov.uk.
- 9.2 Existing licence holders are notified of the licence fees in advance of the date to renew their licence.

10. Impact

- 10.1 Impact Assessments for the review to the Authority's licence conditions (the "Licensing Standards") and the fees for 2009-10 are attached to this memorandum.
- 10.2 There is no impact to the public sector.

11. Regulating small business

- 11.1 The legislation applies to small business. Approximately three quarters of licence holders have a turnover in the licensable sectors of less than £1 million a year.
- 11.2 To minimise the impact on small businesses, the Authority takes a proportionate approach with securing compliance. The Authority's Licensing Standards allocates "points" to each obligation. Following an inspection, a licence will only be revoked if the a licence holder's points exceeded the pass/fail threshold. In cases where licence holders have non-compliances but do not exceed the threshold, conditions will be attached to the licence requiring the problem to be corrected within a set timescale.

12. Monitoring & review

- 12.1 The Authority reviews its fee levels annually. The Licensing Standards will be comprehensively reviewed in 3 years time, or sooner if the need arises.

13. Contact

- 13.1 David Nix at the Gangmaster Licensing Authority on telephone: 0115 900 8964 or email: david.nix@gla.gsi.gov.uk can answer any queries regarding the instrument.

Fees 2009-10 Impact Assessment

Summary: Intervention and Options

Contact for enquiries: David Nix, david.nix@gla.gsi.gov.uk, 0115 900 8964

What is the problem under consideration?

This consultation considers the GLA licence fee levels for 2009 - 10.

What are the policy objectives and intended effects?

The GLA is seeking to recover costs associated with licensing.

What policy options have been considered?

Following discussion with HM Treasury and Defra, one option has been considered. This complies with Managing Public Money.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

GLA licence fees are reviewed annually.

Sign-off

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

Signed by

A handwritten signature in dark ink, appearing to read 'P Whitehouse', written in a cursive style.

Paul Whitehouse, GLA Chairman

Summary: Analysis and Evidence

Costs

Fee Band	Annual Turnover of business in licensed sectors	Licence fee for renewals and new applications	Application Inspection Charge
A	Over £10 million	£2,600	£2,900
B	From £5 million to less than £10 million	£2,000	£2,400
C	From £1 million to less than £5 million	£1,200	£2,150
D	Less than £1 million	£400	£1,850

Benefits

There are no monetary benefits.

Key assumptions

Based on new applicants and existing licence holders renewing (total of 1,262 businesses).

Impact on Admin Burdens Baseline

There are no administrative burdens associated with these proposals.

Evidence Base

In light of HM Treasury advice, the proposed fee levels relate to the actual costs associated with issuing and processing licences. The revised fee charging model was based on the following methodology:

- The GLA pay and non-pay budgets for 2009-10 are identified (see appendix A);
- The pay cost budget is discounted by the percentage which is attributable to enforcement activity;
- The percentage of remaining pay costs which have a direct relationship to the licensing arrangements. The figure subsequently derived will be the cost to be recouped from licensing fees to ensure all licensing costs are recovered

We intend to continue with four fee bands, determined according to the turnover size, as this approach is generally accepted by industry. Based on current fee band numbers, the following projections are estimated for 2009-10:

Fee Band	Annual Turnover of business in licensed sectors	Projected renewals	Projected new applications
A	Over £10 million	14	0
B	From £5 million to less than £10 million	16	0
C	From £1 million to less than £5 million	162	38
D	Less than £1 million	920	112

By applying the above methodology to four fee band approach, the following licence fees for new applications and renewal business are proposed:

Annual Turnover of business in licensed sectors	Fee Band	Licence fee for renewals and new applications	Application Inspection Charge
A	Over £10 million	£2,600	£2,900
B	From £5 million to less than £10 million	£2,000	£2,400
C	From £1 million to less than £5 million	£1,200	£2,150
D	Less than £1 million	£400	£1,850

Explanation for Licence Renewals

Appendix B explains the GLA costs associated for renewing a licence and what will be recouped from licence fees. An assessment of the time and salary has been estimated. The times spent by GLA staff in this process vary according to the licensing band within which the licence holder falls. Appendix C details the numerous factors that relate to the different values assigned to businesses as a result of their size and complexity.

Once the staff costs by band have been estimated, an element of non-pay overhead is added to each estimate. Currently the value of overhead used is 66 per cent of staff costs, based on the value of total non-pay costs as a percentage of total staff costs.

Explanation for New Applications

For 2008-09 the fee level for new applications included an element for the cost of an application inspection, which applies to all new applications.

We now propose that the application inspection fee is separated from the licence fee to further enhance transparency.

The banded structure of application fee reflects the different costs involved in inspecting applicant businesses of different sizes. In the absence of a suitably robust risk profile the GLA proposes to continue conducting application inspections of all new applicants and to use the banded structure to charge for application inspections conducted.

Consultation

A public consultation was conducted from 17 November 2008 until 2 January 2009. 10 responses were received.

The responses broadly welcomed the proposed levels. Some expressed concern on the impact the band D fee could have on micro-sized businesses. I fully appreciate these concerns. Every effort has been made to keep costs down. Furthermore, the band D renewal fee of £400 is remaining unchanged for a third year. In real terms, this represents a saving for those licence holders. It must be stressed the application inspection charge for band D businesses of £1,850, which accurately reflects the costs associated with the inspection, is a one-off cost. In subsequent years, the licence holder only has to pay the renewal licence fee. Our experience of issuing licences has also shown the very smallest businesses can accommodate this charge.

The Association of Labour Providers also called for an increased fee for applicants who have previously traded illegally. The options for achieving this have been explored. However, the Gangmasters (Licensing) Act 2004 does not give the power to introduce such a mechanism.

Summary

The proposed fees significantly reduce the level of fees being charged to labour providers in bands A, B and C. Band D will remain unchanged for the third successive year.

The income the GLA pays to the consolidated fund has been reduced. For 2009-10, there will be a shortfall of possibly up to £300,000 between income generated and the total GLA expenditure. However, this is not a cut in funding. Defra will continue to support the GLA in 2008-09 with grant in aid contributions.

Specific Impact Tests Checklist

Type of testing undertaken	Results in evidence base?	Results annexed?
Competition Assessment	No	No
Small Firms Impact Test	No	No
Legal Aid	N/A	N/A
Sustainable Development	N/A	N/A
Carbon Assessment	N/A	N/A
Other Environment	N/A	N/A
Health Impact Assessment	N/A	N/A
Race Equality	N/A	N/A
Disability Equality	N/A	N/A
Gender Equality	N/A	N/A
Human Rights	N/A	N/A
Rural Proofing	N/A	N/A

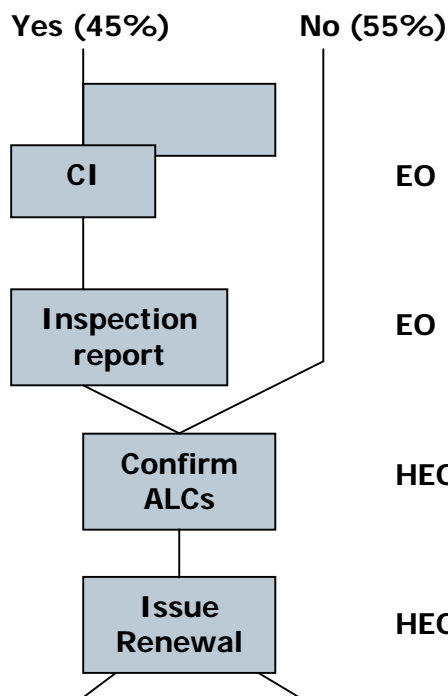
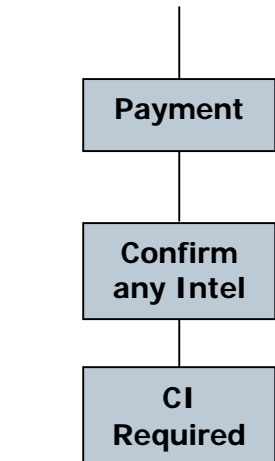
Annex A – GLA Budget for 2009-10

Pay Costs	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Budget
Chairman	2,640	2,640	2,640	2,640	2,640	2,640	2,640	2,640	2,640	2,640	2,640	2,640	31,680
Chief Executives Office	12,232	12,232	12,232	12,232	12,232	12,232	12,661	12,661	12,661	12,661	12,661	12,661	149,358
Policy & Secretariat	13,967	13,967	13,967	13,967	13,967	13,967	14,412	14,459	14,459	14,459	14,459	14,459	170,509
Licensing	18,275	18,275	18,275	18,275	18,275	18,275	18,911	18,911	18,911	18,911	18,911	18,911	223,116
Operations	18,116	18,116	18,116	18,116	18,116	18,116	18,755	18,755	18,755	18,755	18,755	18,755	221,226
Compliance	19,579	19,579	19,579	19,579	19,579	19,579	20,224	20,224	20,224	20,224	20,224	20,224	238,818
Finance & Corporate Services	28,135	28,135	28,135	28,135	28,135	28,135	29,125	29,125	29,125	29,125	29,125	29,125	343,560
Performance related pay	2,000		2,000				2,000			2,000			43,764
Total Pay Costs	114,944	112,944	112,944	114,944	112,944	112,944	118,728	116,775	116,775	118,775	116,775	152,539	1,422,031
Non Pay Costs													
Travel & subsistence	8,750	8,750	8,750	8,750	8,750	8,750	8,750	8,750	8,750	8,750	8,750	8,750	105,000
Accommodation	4,200	4,200	4,200	4,200	4,200	4,200	4,200	4,200	4,200	4,200	4,200	4,200	50,400
Office machinery	250		250				250			250			1,000
Telephone	2,100	2,100	2,100	2,100	2,100	2,100	2,100	2,100	2,100	2,100	2,100	2,100	25,200
Stationery/postage	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	1,500	18,000
Board expenses	1,500	1,000	1,500	1,500	1,000		1,500	1,000		1,500	1,500	1,000	10,000
Internal audit												20,000	20,000
External audit												32,000	32,000
Annual Report												3,500	3,500
Recruitment costs		5,000				5,000							10,000
Vehicle hire	200	200	200	200	200	200	200	200	200	200	200	200	2,400
Training	2,083	2,083	2,083	2,083	2,083	2,083	2,083	2,083	2,083	2,083	2,083	2,087	25,000
App Opps for LAWS	5,420	5,420	5,420	5,420	5,420	5,420	5,420	5,420	5,420	5,420	5,420	5,420	65,040
Desktop Support	4,100	4,100	4,100	4,100	4,100	4,100	4,100	4,100	4,100	4,100	4,100	4,100	49,200
Software licenses & Support	1,300	1,300	1,300	1,300	1,300	1,300	1,300	1,300	1,300	1,300	1,300	1,300	15,600
Policy & Communications	6,833	6,833	6,833	6,833	6,833	6,833	6,833	6,833	6,833	6,833	6,833	6,837	82,000

Miscellaneous	375	3,775	1,275	1,275	1,275	1,275	775	1,275	1,275	1,275	1,275	1,275	1,275	31,608	49,233
Interpreters	1,900	1,900	1,900	1,900	1,900	1,900	1,900	1,900	1,900	1,900	1,900	1,900	1,900	1,900	22,800
Legal Costs (Appeals)	8,333	8,333	8,333	8,333	8,333	8,333	8,333	8,333	8,333	8,333	8,333	8,333	8,333	8,337	100,000
External Inspections		2,500		2,500		2,500						2,500			10,000
Measuring Outcomes	10,000			10,000			10,000				10,000				40,000
HR Consultancy			2,500			2,500						2,500		2,500	10,000
Independent Review															0
Depreciation	16,000	16,000	16,000	16,000	16,000	16,000	16,000	16,000	16,000	16,000	16,000	16,000	16,000	16,000	192,000
Total non pay costs	74,844	74,994	66,494	75,744	67,494	73,994	75,244	67,494	66,494	74,244	67,994	67,994	153,339	938,373	
Less Overhead Transfer From Enforcement	80,860	77,990	76,165	81,265	75,365	78,790	82,770	77,121	77,921	82,346	77,346	77,346	127,728	995,664	
TOTAL EXPENDITURE	108,928	109,948	103,273	109,423	105,073	108,148	111,202	107,148	105,348	110,673	107,424	107,424	178,150	1,364,740	

Annex B – Costs Associated with Renewal

Department	Level	D	C	B	A
Licensing	AO	0.5	4	6	10
Finance	AO	0.5	0.5	1	2
Intelligence	EO	0.5	1	1.5	2
Licensing	HEO	0.5	0.5	1	1
Compliance	EO	6.5*	19*	30*	36*
Compliance	EO	2*	3*	4*	5.5*
Licensing	HEO	0.5	5	12	16
Licensing	HEO	0.5	0.5	1	1



* All values factored down 45 per cent of 'true' value to reflect the fact that not all labour providers received a compliance inspection every year

BUDGET 2009-10

<u>Department</u>	<u>Total cost</u>	<u>% charged to Enforcement</u>	<u>Balance</u>	<u>% charged to Licensing</u>	<u>Recovery through fees</u>
Chairman	31,680	60	12,672	5	634
CE Office	149,358	60	59,743	10	5,974
Policy & Secretariat	170,509	55	76,729	40	30,692
Licensing	223,116	30	156,181	100	156,181
Operations	221,226	70	66,368	40	26,547
Compliance	238,818	30	167,173	100	167,173
Finance & Corp. Services	343,560	40	206,136	20	41,227
Temporary Labour	0	30	0	20	0
Performance related pay	43,764	30	30,635	45	13,786
Totals	1,422,031		775,637		442,213
Add Overhead recovery (66.0%)					291,861
Total Pay £1,422,031					
Total Non Pay £938,373					
Total Cost for fee recovery					<u>734,074</u>

ANALYSIS OF COSTS RE LICENSING FEE RECOVERY

		<u>BANDS</u>				
		<u>C</u>	<u>B</u>	<u>A</u>		
1. Licensing	Application	AO	0.5	6.0	10.0	
2. Finance	Payment	AO	0.5	1.0	2.0	
3. Intelligence	Confirm intell	EO	0.5	1.5	2.0	
4. Licensing	CI required ?	HEO	0.5	1.0	1.0	
5. Compliance	CI	EO	6.5	30.0	36.0	
6. Compliance	Inspection report	EO	2.0	4.0	5.5	
7. Licensing	Confirm ALC's	HEO	0.5	12.0	16.0	
8. Licensing	Issue Renewal	HEO	0.5	1.0	1.0	
			11.5	56.5	73.5	
		AO	1.0	7.0	12.0	
		EO	9.0	35.5	43.5	
		HEO	1.5	14.0	18.0	
	<u>Cost</u>					
	14.14 per hour	AO	14.14	98.98	169.68	
	20.93 per hour	EO	188.37	743.02	910.46	
	27.58 per hour	HEO	41.37	386.12	496.44	
	Staff cost		243.88	1,228.12	1,576.58	
	Overheads (66.0%)		160.96	810.56	1,040.54	
	Total Cost		404.84	2,038.67	2,617.11	
	Rounded Fee Level		400.00	2,000.00	2,600.00	
Recovery of Costs through Fees (Using 2009-10 Budget)						
	No of LP's by Band	1032	200	16	14	1,262
	<u>Income generated</u>		<u>412.800</u>	<u>240.000</u>	<u>32.000</u>	<u>721.200</u>

Annex C – Costs Associated with Larger Businesses

The largest element of the licence fee is the process involving the compliance inspection and subsequent report. This is undoubtedly impacted by the size of the licence holder's labour force which ultimately translates to the business's turnover.

The following factors emphasise the complexity of dealing with licence holders depending, predominately, on their size:

- Larger licence holders tend to operate from multiple locations and operate from a series of branches spread nationwide. Their coverage is significantly greater than a smaller business.
- Allied to this coverage point, the larger licence holders will tend to operate with a multitude of labour users. This means compliance inspections are more difficult to organise as they tend to be a combination of visits to the licence holder and labour user premises (particularly as the workers need to be interviewed at the labour user's premises).
- There are higher numbers of worker interviews - the GLA interview 10 per cent of workers during an inspection.
- The logistics involved in arranging visits to larger labour providers tend to be more costly in terms of inspector time and travel costs.

All of the above represent indicators that point to the validity of charging larger fees for larger businesses due to the costs incurred by the GLA in issuing and maintaining the licence.

Licensing Standards Review Impact Assessment

Summary: Intervention and Options

Contact for enquiries: David Nix, david.nix@gla.gsi.gov.uk, 0115 900 8964

What is the problem under consideration?

The GLA conducted a review of its licensing standards during 2008.

What are the policy objectives and intended effects?

To assess whether the GLA licensing standards are effective in meeting the Authority's mission statement to reduce the exploitation of workers while ensuring labour providers operate within the law.

What policy options have been considered?

A range of options were considered, including:

- Revising the Licensing Standards categories and scoring,
- Enhancing the definition of Fit and Proper,
- Making the standards clearer on the requirement to comply with conditions attached to a licence, and
- Removing some unnecessary standards.

An option rejected concerned the accommodation offset and the National Minimum Wage:

- We were aware that a number of reputable labour providers no longer offer accommodation because of the difficulty in providing adequate housing for this amount. This could create a situation where workers are exploited by unscrupulous landlords. Where labour providers provide accommodation, the crucial matter for the GLA is the nature of the relationship between the worker and labour provider (e.g. debt bondage, where the workers are tied to the accommodation). A person may freely choose to pay a higher rate than the offset for a labour provider's accommodation where the housing is adequate and reasonable value. The accommodation offset may technically exceeded. However, we do not consider that this would represent exploitation. We invited views in the consultation on amending standard on National Minimum Wage to proportionately take account of exceeding of the accommodation offset.
- A proposal was developed for breaches where rent charged is between the level of the accommodation offset and the appropriate Local Housing Allowance (LHA), we would have classed the failure as a non-critical non-compliance and would have contributed 8 points to a licensing standard compliance score.

- The GLA would not have expected this non-compliance to be resolved within a set deadline (in the same way as other conditions which may be attached to a licence). These 8 points would have remained on the licence for a 12 month period and would have counted towards any subsequent inspection score. Where rent was charged above the LHA, we would have classed the failure as a critical non-compliance. This would have only applied for situations where there is no element of on-call work. Failure to pay correct levels for workers who work on-call will result in a critical non-compliance.
- This option was rejected on the grounds it could have been taken as being out of step with the Government's enforcement of NMW.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

The licensing standards will be next reviewed in 3 years or sooner if necessary.

Consultation stage sign-off

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

Signed by

A handwritten signature in dark ink, appearing to read 'P Whitehouse', written in a cursive style.

Paul Whitehouse, GLA Chairman

Summary: Analysis and Evidence

Costs

As the GLA licensing standards draw together existing legislative requirements, it is anticipated complying with any new or amended standards will not impose any new costs for licence holders beyond what is generated under other legislation.

There may be costs associated with the Authority's proposal to require new licence holders to notify (either by telephone, email or letter) the GLA once they start supplying workers in the licensed sectors. However, it is estimated these will be negligible.

Licence holders and new applicants may incur costs through familiarising themselves with the revised standards and associated guidance. However, these costs are not anticipated to be significant.

Benefits

Benefits for business may be realised through the standards being easier to understand.

Key assumptions

The GLA has 1,186 licence holders (as of 22 July 2008).

Impact on Admin Burdens Baseline

It is estimated there will be negligible new administrative burdens associated with any new or amended licensing standards. There may be some small administrative costs for notifying the GLA.

Evidence Base

A 12 week consultation reviewing the GLA Licensing Standards closed on 24 October 2008. A summary of responses is available on the GLA website (www.gla.gov.uk). These responses informed the revised version of the Standards (available at www.gla.gov.uk). This Impact Assessment should read alongside the new Standards. Below details the significant changes:

Categories, scoring and ALCs

Previously there were four types of licensing standard category with associated points: Critical (30 points); Major (8 points); Reportable (4 points); Correctable (2 points). Only Critical and Major non-compliances count towards an inspection score.

The new version has simply "Standards", with some designated as "Critical". The scoring for the Critical will remain at 30 points. The other standards will be 8 points (the same as the current Major standards), except for the new standard 1.4 which is has 16 points associated with it. The fail score for an inspection will remain at 30 points. The current process of attaching Additional Conditions to a licence will continue

Standards previously categorised as Reportable and Correctable have been upgraded or removed.

Fit and Proper Test

The definition of fit and proper has been enhanced and is now much clearer on the circumstances we may apply to fail a business for not being fit and proper.

A competency test for the principal authority is now included – this has been specifically included to tackle those who put forward a front person who has no real control over the business.

Correcting ALCs and Notifying Changes of Details

To emphasise the importance of clearing ALCs within the prescribed time period, a new Critical standard has been introduced. This includes new businesses being required to notify the GLA when they start trading – this will help determine whether a further inspection is required (new licensing standard 1.3).

There is also a slight change to how we will consider licence holders who do not notify us of changes in details (new licensing standard 1.4). As this non-compliance will be immediately resolved when it comes to light, a different approach to attaching an additional condition to the licence is required. In future, non-compliance with this will contribute 16 points to a licensing standard compliance score. These 16 points will remain on the licence for a 12 month period and will count towards any subsequent inspection score. This is analogous to points on a driving licence.

PAYE, NI and VAT

At present, complying with PAYE, National Insurance and VAT is covered across three separate standards. The PAYE and NI standards are currently classed as Major with VAT Reportable.

There is a single proposed new standard combining all three issues, with the score upgraded to Critical. Combining the old standards reflects the synergy between the three areas. Upgrading to Critical is a response to the seriousness of tax evasion and exchequer fraud.

Forced Labour

Current standard 2.7 (which deals with withholding wages) has been moved to section 3 and now sits alongside the standards which relate to forced labour. It has also been upgraded to Critical to reflect the seriousness of withholding wages from workers. This brings the GLA's Standards into line with the Council of Europe Convention on Action against Trafficking in Human Being (which the UK ratified on 17 December 2008 and will be in force on 1 April 2009).

Accommodation

Current standard 4.3 has been split to form 4.1 and 4.2 to make clearer what is expected of labour providers who provide, or effectively provide, accommodation.

Health and Safety

Health and safety standards have been simplified to make clearer who is responsible for assessing and controlling risks. A new critical standard has been introduced relating to a significant threat of serious injury.

A single transport standard (classed as Critical) is proposed. This new standard should better reflect the importance of safe and adequately insured transport.

Standards Relating to Shellfish Gathering

The emphasis with standards relating to shellfish gathering has been shifted to reflect the responsibilities of the gangmaster and the supervision of the workers. Standards which were purely focussed on the behaviour of the workers (which may be outside the control of the gangmaster) have been removed. The onus is now placed firmly on the gangmaster adequately controlling and looking after the workers. This change should make the shellfish standards fairer.

Recruitment and Contractual Arrangements

The most significant change is to increase work finding fees to a Critical (see new standard 7.1). Further changes have also been made to reflect the Conduct of Employment Agencies and Employment Businesses Regulations.

Removed Standards

The following standards have been removed entirely:

Current Standard (with reference and category)	Reason for removal
Requiring licence holders to provide their licence number and other details to their workers and labour users (1.3; Correctable)	Considered unnecessary as a standard in itself. Anyone using a labour provider should check the public register to make sure they are licensed (the "Reasonable Steps" to establish a statutory defence).
Evidence that the licence holder has an accurate payroll system in place whether in paper or electronic form (2.4; Correctable)	This is not needed. What matters is that the pay and payslips are accurate – this is covered by new standards 2.2 and 2.4.
Scotland only standard for wage deductions for agricultural workers (2.6; Major)	This is sufficiently covered in new standard 7.3. Plus there has never been a failure against this standard – old standard 2.5 sufficiently covered wage deductions so the standard has always been superfluous.
Data and records are kept securely (3.10; Correctable)	Not considered necessary. Confidentiality and data protection matters will be dealt with under

Correctable)	new LS 5.5.
Continuing paying workers after introducing them for permanent work with a labour user (7.5; Correctable)	Not considered necessary – this standard does not present any detriment to the worker.
Evidence of agreement between licence holders and sub-contractors (8.3; Correctable)	Not considered necessary as covered by 7.4. The key issue is whether the sub-contractor is licensed.
Securing the worker’s permission before transferring them to another licence holder (8.4; Correctable)	Not needed. New standard 3.2 stipulates work must be freely chosen.
Details of any work activities carried out by children and young children are on file (9.2; Major)	Record keeping covered under 7.3.
Copies or risk assessments available where young persons are employed (9.3; Reportable)	Not needed. Risk assessment under new standard 6.1 will be sufficient.
Children and/or young persons are only carrying out work permitted by law (9.4; Major)	If any serious abuse of underage working laws is ever identified, this can be tackled through the new fit and proper test.
No evidence of student workers working in excess of 20 hours per week during term time (10.2; Reportable)	New standard 7.2 should sufficiently deal with entitlement to work in the UK. This level of detail is not considered necessary.

Revoking With Immediate Effect

The new version of the standards now makes clear when the GLA will revoke a licence with or without immediate effect. The standards classed as Critical now state which type of revocation may be applied. There is a clear process for deciding whether to revoke with immediate effect. Firstly, the GLA Head of Licensing will assess the inspection report to determine the licence decision.

If there are any failures against Critical Standards designated as potential licence revocations with immediate effect, the GLA Head of Licensing will escalate the matter to the GLA Executive Management Board who will then review the case and decide whether any licence revocation should be with immediate effect.

The table below summaries the Critical standards and associated type of revocation. If a licence holder accumulates an inspection score above 30 points without failing any of the Critical standards which result in a revocation with immediate effect, the licence will be revoked without immediate effect.

Critical Standard	Type of revocation
Fit and proper (1.1)	May be with immediate effect. Failure against this standard demonstrates the licence holder is manifestly unfit to hold a licence.
Principal Authority competence test (1.2)	Where this standard is failed for licence holders with a new Principal Authority, the licence may be revoked with immediate effect. Failure against this standard will demonstrate the Principal Authority's inability to act in a fit and proper manner.
Correcting ALCs (1.3)	Without immediate effect.
PAYE, NI and VAT (2.1)	Without immediate effect.
Paying minimum wage (2.2)	Without immediate effect.
Physical and Mental Mistreatment (3.1)	May be with immediate effect. This directly relates to the health, safety and welfare of the workers.
Debt bondage and retaining ID documents (3.2)	May be with immediate effect. This standard covers the key ILO indicators of forced labour.
Withholding wages (3.3)	May be with immediate effect. Again, this is a serious example of forced labour.
Quality of Accommodation (4.1)	May be with immediate effect. This directly relates to the health, safety and welfare of the workers.
Transport (6.5)	May be with immediate effect. This directly relates to the health, safety and welfare of the workers.
Using workers to gather shellfish (6.6)	May be with immediate effect. This directly relates to the health, safety and welfare of the workers.
Shellfish gathering – Getting to the Work Area (6.7)	May be with immediate effect. This directly relates to the health, safety and welfare of the workers.
Lifejackets and Liferrafts (6.8)	May be with immediate effect. This directly relates to the health, safety and welfare of the workers.

Use of Boats (6.9)	May be with immediate effect. As uncertified boats would be impounded by the Maritime and Coastguard Agency, it is appropriate to revoke with immediate effect.
Shellfish gathering permits and licences (6.10)	May be with immediate effect. Without the required fishery permits, the workers should not be in the work area.
Job Finding Fees and Providing Services (7.1)	Without immediate effect.
Using Sub-Contractors (8.1)	May be with immediate effect. Treated seriously as this is a criminal offence.

Specific Impact Tests Checklist

Type of testing undertaken	Results in evidence base?	Results annexed?
Competition Assessment	No	No
Small Firms Impact Test	No	No
Legal Aid	N/A	N/A
Sustainable Development	N/A	N/A
Carbon Assessment	N/A	N/A
Other Environment	N/A	N/A
Health Impact Assessment	N/A	N/A
Race Equality	N/A	N/A
Disability Equality	N/A	N/A
Gender Equality	N/A	N/A
Human Rights	N/A	N/A
Rural Proofing	N/A	N/A