EXPLANATORY MEMORANDUM TO

THE GANGMASTERS (LICENSING AUTHORITY) REGULATIONS 2014

2014 No. [XXXX]

1. This explanatory memorandum has been prepared by the Home Department and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument is intended to streamline the governance structures of the Gangmasters Licensing Authority (GLA) by reducing the size of the Board from its current 28 members to one with a maximum of nine. In addition, Board members will be recruited through open competition rather than by nomination from a panel of named bodies. It will allow for the continuation of the level of engagement afforded by the previous representative Board by introducing an enhanced role for stakeholder advisory groups.

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

3.1 None

4. Legislative Context

4.1 This instrument has been drafted to implement one of the key recommendations of the Red Tape Challenge (RTC) review of the GLA and implements a measure announced in a Written Ministerial Statement to Parliament on 24 May 2012. It is intended to replace the Gangmasters (Licensing Authority) Regulations 2005 ("the 2005 Regulations"). The Gangmaster Licensing (Exclusions) Regulations 2013 which came into force on 1 October 2013 was made following the recommendation of the RTC review.

4.2 When the GLA was established in 2005 the principal concern underlying the approach to designing its governance structures was that they would encourage a high level of participation from the widest possible cross section of industry stakeholders. The result was a large representative Board with reserved places, subject to Ministerial appointment, for specific stakeholder organisations as well as a number of *ex-officio* places for Government Departments and agencies with common operational interests with the GLA.

4.3 This approach is widely acknowledged to have been successful in helping the GLA establish itself as a well-respected and effective regulator. However, it was recognised that the governance structures enshrined in the 2005 Regulations were

intended to serve the Authority during its early years of operation. As a consequence Ministers undertook to review the operation of the Board from time to time to ensure that it continues to provide effective leadership. The RTC review of the GLA concluded that its developing role demands more focused leadership and recommended the introduction of a smaller Board to provide the Authority with clear strategic oversight and direction.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Secretary of State for the Home Department has made the following statement regarding Human Rights:

In my view the provisions of the Gangmasters (Licensing Authority) Regulations 2014 are compatible with the Convention rights.

7. Policy background

What is being done and why:

7.1 The Gangmasters (Licensing) Act 2004 ("the 2004 Act") makes provision for the establishment of the Gangmaster Licensing Authority as a body which issues licenses to businesses which supply workers, or use workers in connection with agricultural work, the gathering of wild creatures and wild plants, the harvesting of fish from fish farms, and certain processing and packaging; and for connected purposes and gives the Secretary of State powers to introduce secondary legislation to determine the Authority's governance arrangements. This instrument revokes and replaces the 2005 Regulations by introducing a smaller more strategically focussed Board with greater freedom to determine its own procedures and adding advisory groups to replace the liaison groups provided for in the 2005 Regulations.

7.2 The instrument addresses the need to bring the governance arrangements of the GLA in line with best practice in comparable bodies. The instrument achieves this, but does so by introducing structures intended to retain the very strong element of stakeholder engagement enshrined in the 2005 Regulations.

7.3 When the GLA commenced operations in 2005 its primary function, that of issuing licences permitting the supply of labour in the sectors it regulates, was seen as being of greatest importance. Ministers concluded that a widely-drawn representative Board would provide for the level of stakeholder engagement needed to ensure widespread compliance with the licensing scheme among legitimate labour providers.

7.4 This structure continued to have relevance to the GLA's operational needs when the Authority switched emphasis from building the register of licence holders to

investigating those who had sought to evade licensing. During this initial phase of enforcement activity the GLA continued to act largely as a stand-alone body, taking action on its own against individual rogue operators.

7.5 In recent years, the GLA's approach has changed significantly. Its licensing role continues; however, the Authority has begun exploring new ways of licensing the businesses it regulates, moving wherever possible to a much more "light touch" approach. Meanwhile, the GLA has strengthened the focus of its enforcement activities from acting alone against individual criminals to working jointly with other bodies with similar interests to mount large scale operations, often targeting a number of suspects in a particular locality.

7.6 The changing and more complex nature of the GLA's activities has highlighted the need for a different kind of Board to oversee its operations. Governance structures which were appropriate when the GLA was establishing itself as a regulator and enforcement body are no longer relevant to the way it works. A smaller Board recruited from a wider pool of potential candidates would provide the greater diversity of experience needed to provide the strategic leadership it needs as its operational priorities develop.

7.7 The original governance structures of the GLA helped to develop a broad consensus in support of its role among stakeholders. It also provided a valuable forum for the exchange of information and views between stakeholders and the Authority. In proposing to replace the current representative Board with one recruited via open competition the Government is aware of the need to ensure that structures exist which allow stakeholders to continue to engage fully with the new Board and with the GLA more widely.

7.8 Therefore, this instrument permits the Board to establish advisory committees. Unlike the existing stakeholder liaison groups, the measure introduced in this instrument obliges the Board to pay due regard to the advisory committees findings and recommendations. This is intended to reassure stakeholders that the replacement of the representative Board with one constituted along more conventional lines will not close off the hitherto highly productive dialogue between themselves and the Authority.

- Consolidation

7.9 No consolidation is necessary.

8. Consultation outcome

8.1 Proposals to amend the governance structures of the GLA were included in a public consultation on the legislative changes needed to implement the measures arising from the RTC review of the GLA. It was launched in April 2013 and ran for 8 weeks.

8.2 The consultation was conducted via an online survey, however paper copies were available for those who required them. The link to the consultation web page was

emailed directly to key stakeholder organisations and via the GLA was sent out to all GLA licence holders and to members of the Labour Provider and Labour User liaison groups. In addition, the consultation webpage could be accessed via the Government Website. Defra also invited representatives from organisations representing the interests of a wide range of groups in the sectors regulated by the GLA to a one day seminar to discuss the proposals in more detail. The consultation included questions about matters that have been, or will be dealt with via other legislative vehicles. Two questions were asked about the GLA's governance arrangements.

8.3 The consultation document set out the reasons why the Government wished to change the structure of the GLA Board; provided an accessible overview of Cabinet Office guidance on the role of the board of a public body; gave a summary of the governance arrangements of three public bodies broadly similar in size to the GLA for comparison; and, briefly set out the Government's proposals for amending the GLA Board structure.

8.4 Respondents were asked whether they agreed with the Government's proposal to reduce the size of the GLA Board, and move away from a representative Board to one recruited by open competition to bring it in line with best practice in similar bodies. They were also asked to give details of their preferred mechanism for ensuring that a smaller Board would have access to and take account of a wide range of stakeholder views.

8.5 The consultation received 100 responses, of which 61 answered the question concerning the structure of the Board, and 48 answered the question concerning future mechanisms for transmitting stakeholder views to a smaller GLA Board. Of those answering the question about the GLA Board structure, 56 agreed with the Government's proposal for reform, while 5 expressed their disagreement. Forty five of the 48 responses to the question seeking views on how to maintain stakeholder contact with a reformed Board were in favour of the retention of a formal mechanism for ensuring these views were heard. There was no clear consensus on how this would best be achieved, however, several respondents suggested the use of formal stakeholder representation groups similar to the existing Liaison Groups. Three respondees were opposed to strengthening stakeholder engagement structures. All three also expressed opposition to Government proposals to reform the structure of the Board.

8.6 The Government's response to the consultation was published in August 2013. It concluded that measures would be introduced to reform the structure of the GLA Board.

9. Guidance

9.1 The measures in this instrument make changes which are internal to the GLA and have no impact on stakeholders or the public. Therefore no guidance will be issued in respect of the Regulations made via this instrument.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment was prepared for all of the measures reforming the GLA arising from the Red Tape Challenge at the consultation stage. In accordance with the rules governing RTC measures a final Impact Assessment is not required.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The effectiveness of the GLA's governance arrangements will be assessed as part of the Triennial Review process which will consider the continuing need for the body and the effectiveness of its governance arrangements. Individual board member's performance will be appraised by the Chair and reported to the Secretary of State.

13. Contact

Please contact public.enquiries@homeoffice.gsi.gov.uk or 020 7035 4848 for any queries regarding the instrument.