EXPLANATORY MEMORANDUM TO

THE GANGMASTERS LICENSING (EXCLUSIONS) REGULATIONS 2010

2010 No. 649

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

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

2. Purpose of the instrument

2.1 This instrument amends the Gangmasters Licensing (Exclusions) Regulations 2006 ("the 2006 Regulations"), which specify the circumstances where a person acting as a gangmaster, as defined by the Gangmasters (Licensing) Act 2004, is not required to obtain a gangmaster's licence.

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

3.1 None

4. Legislative Context

4.1 The 2006 Regulations are made under Section 6(2) the Gangmasters (Licensing) Act 2004 ("the 2004 Act"). The primary objective of the 2004 Act is to curb the activities of those gangmasters who exploit their workers and/or act illegally, by introducing licensing of gangmasters operating in agriculture, shellfish gathering and associated processing and packaging activities.

4.2 Acting as a gangmaster has deliberately been defined widely in the 2004 Act and as a result, certain circumstances where the risk of exploitation is minimal are brought within the definition of gangmaster activity. In general terms a person is acting as a gangmaster if he or she:

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

4.4 The 2006 Regulations fine tune the scope of the licensing arrangements, by specifying circumstances where a person does not need to obtain a gangmaster's licence. This instrument amends the 2006 Regulations to clarify the existing circumstances, and provide for new circumstances, in which a person does not require a gangmaster's licence

5. Territorial Extent and Application

5.1 This instrument extends to Great Britain.

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 When the 2006 Regulations were made, Ministers gave a commitment to review their operation and in particular, to:

- assess whether they were effective in excluding the circumstances they were originally intended to;
- ensure that licensing is not imposing disproportionate burdens on business; and
- consider the case for amending the scope of the exclusions in the light of experience.

7.2 Accordingly, in July 2008 a consultation exercise was launched on possible amendments to the 2006 Regulations. The main changes this instrument makes to the 2006 Regulations are outlined below. The paragraph references are to the relevant paragraphs in the Schedule to this instrument.

7.3 The definition of "catering establishment" has been amended to make clear that premises where food is prepared for delivery to the consumer will only be treated as catering establishments if there is no change of ownership of the food between preparation and delivery to the consumer (paragraph 3).

7.4 The definition of "wholesale establishment" has been amended to specify that food processing and packaging facilities are excluded. (paragraph 3).

7.5 The definition of "share farming agreement" has been amended so that it applies to agreements which share net receipts, rather than gross receipts, of business assets or services (paragraph 4(2)).

7.6 The exclusion for the loan of a worker by a farmer to another farmer has been amended to increase the amount of time a farmer is allowed to loan a worker, without holding a gangmaster's licence, to 30% of the hours worked by the worker over the 12 months immediately preceding the start of the loan period (paragraph 4(1)).

7.7 The exclusion for the use of a worker by a farmer to provide a service to another farmer has been amended. The period for which a farmer may use a worker to provide a service to another farmer has increased from 3 to 4 weeks. The maximum number of hours a worker may work during that period has increased to 30% of the hours worked for the farmer providing the service in the 12 months immediately preceding the period of work (paragraph 5).

7.8 The exclusion for supply of specialist agricultural workers to a farmer has been amended to increase the number of workers that can be supplied from 1 to 4 per day (paragraph 14).

7.9 There is a new exclusion for the use of a worker by a person to provide a service to a farmer, where that person contracts with a third party to deliver the service and the service involves the use of machinery owned or hired by that third party (paragraph 9).

7.10 There is a new exclusion for the use of a family member as a worker to provide a service to a farmer (paragraph 15).

7.11 There is a new exclusion for the supply of workers between corporate bodies under the same ownership. The exclusion also allows the use of a worker by one corporate body to provide a service to another corporate body under the same ownership (paragraph 18).

8. Consultation outcome

8.1 The views of approximately 1500 companies, trade bodies, other organisations and private individuals with an interest in the GLA regulated sector were sought during a 12 week consultation exercise held between July and October 2008. The Consultation Document asked for responses to 21 questions covering a number of aspects of the operation of the 2006 Regulations.

8.2 There were 39 responses to the consultation exercise. The responses called for changes which would allow greater flexibility in the supply of labour, especially in the area of farmer to farmer loans, provision of services and in the supply of workers with specialist skills. There was also a desire for increased clarity in some definitions in the 2006 Regulations. There were mixed views amongst the forestry sector about whether or not it should remain subject to licensing However, as there was no clear consensus either way, it was decided to retain forestry within the scope of the licensing scheme.

9. Guidance

9.1 Telephone guidance in the operation of the gangmasters licensing scheme can be obtained from the Gangmasters Licensing Authority, tel: 0845 602 5020. Written guidance on the impact of the changes to the 2006 Regulations will be made available on the Defra Website.

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible. The result of the revised regulations will be to reduce the number of businesses and other bodies operating in the GLA regulated sector which need to obtain a gangmasters' licence.

10.2 The impact on the public sector is negligible.

10.3 A Full Impact Assessment is attached to this memorandum.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 The gangmaster industry is largely made up of small businesses. Therefore, firms with fewer than 20 employees will be the main beneficiaries of the reduction in the scope of the licensing scheme resulting from the amendments to the 2006 Regulations.

12. Monitoring & review

12.1 The GLA is required to monitor the operation of the licensing regime.

13. Contact

Judith Marsden at the Department for Environment, Food and Rural Affairs, tel: 020 7238 5748 or email: judith.marsden@defra.gsi.gov.uk, can answer any queries regarding the instrument.

Summary: Intervention & Options

Department /Agency:	Title:	
Defra	Impact Assessment of the operation of the Gangmasters Licensing (Exclusions) Regulations 2006	
Stage: Final	**Version:** 1	**Date:** 25 February 2009

Related Publications: Consultation paper on the operation of the Gangmasters Licensing (Exclusions) Regulations 2006

Available to view or download at:

http://www.defra.gov.uk/corporate/consult/default.asp

Contact for enquiries: Judith Marsden **Telephone:** 0207-238-5748

What is the problem under consideration? Why is government intervention necessary?

The Gangmaster Licensing (Exclusions) Regulations 2006 fine tune the scope of the Gangmasters Licensing Act 2004 by specifying the circumstances where a licence is not required. Since the Regulations came into force some stakeholders have argued that they need to be revised in order to clarify their application; and to remove certain agricultural activiites from the scope of licensing.

What are the policy objectives and the intended effects?

To clarify the terms of the Gangmaster Licensing (Exclusions) Regulations 2006; and to reduce administrative burdens by removing from the licensing requirements those circumstances which do not represent gangmaster activity or where the risk of exploitation of workers is minimal.

What policy options have been considered? Please justify any preferred option.

Option 1 - Do nothing. This would not be beneficial as it would not provide clarity of the circumsances where a gangmaster's licence is not required and it would mean that the current scope would continue to apply even where experience has shown that there is little risk of abuse of workers.

Option 2 - Amend the regulations in accordance with responses received as a result of a public consultation exercise and clarify certain definitions to confirm the original policy intention of the Exclusion Regulations.

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

The operation of the licensing scheme is reviewed annually by the GLA.

Ministerial Sign-off For SELECT STAGE Impact Assessments:

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 leading options.

Signed by the responsible Minister:

Bryan Davies

.....Date: 8th March 2010

Summary: Analysis & Evidence

Policy Option:	Description:

COSTS

ANNUAL COSTS

One-off (Transition)	Yrs
£ 0	10

Average Annual Cost (excluding one-off)

£ 23,000

Description and scale of **key monetised costs** by 'main affected groups' Amending the Exclusion Regulations will not increase the total cost of the licensing scheme. However, as the scheme is expected to be self-financing, the licence costs of remaining licence holders may need to rise marginally to make good the consequent reduction in fee income resulting from the exclusions. (See para 10.)

Total Cost (PV) £ 197,977

Other **key non-monetised costs** by 'main affected groups' 0

BENEFITS

ANNUAL BENEFITS

One-off	Yrs
£ 0	10

Average Annual Benefit (excluding one-off)

£ 23,000

Description and scale of **key monetised benefits** by 'main affected groups' Annual benefit represents savings stemming from not needing to obtain a licence. There will be negligible adminstrative savings to the GLA and to former licensees no longer required to renew their licences

Total Benefit (PV) £ 197,977

Other **key non-monetised benefits** by 'main affected groups'

Key Assumptions/Sensitivities/Risks The changes made to the Exclusion Regulations will regularise the position of businesses, where there is current scope for dffering interpretation as to whether a licence is required and provide some additional flexibility in limited number of areas. Marginal impact on fees.

Price Base Year	Time Period Years 10	**Net Benefit Range** (NPV) £	**NET BENEFIT** (NPV Best estimate) £ 0

What is the geographic coverage of the policy/option?				GB	
On what date will the policy be implemented?				1 April 2010	
Which organisation(s) will enforce the policy?				GLA (no change)	
What is the total annual cost of enforcement for these organisations?				£ 2.16m (para 19)	
Does enforcement comply with Hampton principles?				Yes	
Will implementation go beyond minimum EU requirements?				N/A	
What is the value of the proposed offsetting measure per year?				£ 0	
What is the value of changes in greenhouse gas emissions?				£ 0	
Will the proposal have a significant impact on competition?				No	
Annual cost (£-£) per organisation (excluding one-off)	Micro 0	Small 0	Medium 0	Large 0	
Are any of these organisations exempt?	Yes/No	Yes/No	N/A	N/A	

Impact on Admin Burdens Baseline (2005 Prices) (Increase - Decrease)

Increase of £ 0 Decrease of £ 2695 **Net Impact** £ - 2695

Key: **Annual costs and benefits: Constant Prices** **(Net) Present Value**

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

SUMMMARY

Background

1. The Gangmasters Licensing (Exclusions) Regulations 2006 fine tune the scope of the licensing arrangements by specifying circumstances where a person does not need to obtain a licence. In broad terms the current arrangements have mapped reasonably accurately those areas where providers of gang labour are active, while excluding peripheral labour supply arrangements which do not represent the supply of gang labour or where the risk of exploitation is low. However feedback received from stakeholders since the Regulations were made in 2006 suggested that some refinement may be necessary to give some more flexibility to the range of excluded circumstances and to the clarify the terms used to define the current exclusions.

2. Accordingly, in July 2008 we launched a consultation exercise on possible amendments to the Exclusion Regulations. The consultation document focused on those areas where feedback received from the regulated sectors of the industry suggested that there was a need for further fine tuning. These are discussed in detail in the consultation document, but in summary are:

- the definition of share farming
- farmer to farmer loans
- provision of services
- specialist workers
- quasi public organisations and charities
- supply between separate bodies corporate in the same ownership
- pea vine co-operatives
- forestry

Responses to the Consultation Exercise

3. Thirty-nine responses were received from a wide range of interested bodies and individuals. Many of these called for changes which would allow greater flexibility in the supply of labour, especially in the area of farmer to farmer loans, provision of services and in the supply of workers with specialist skills. There was also a desire for increased clarity in the use of some definitions in the regulations. There were mixed views amongst the forestry sector about whether or not it should remain within the regulated sectors. There were also calls from the shellfish sector that it should be exempt from the licensing regime, but this was outside the scope of the consultation exercise. A summary and analysis of the responses to the consultation can be found at Annex 1.

Proposed Amendments to the Regulations

4. As a result of the consultation exercise, we are proposing the following amendments to the Gangmasters Licensing (Exclusion) Regulations 2006:

a) Amendment to the definition of share-farming;.
b) Amendment to the provisions on farmer to farmer loans to allow farmers to loan a worker for up to 30% of the hours worked by the worker over the 12 months immediately preceding the start of the loan.
c) An increase in the period for which a farmer may loan a worker for the provision of a service from 2 to 4 weeks provided that the worker does not work more than 30% of the total hours they worked during the 12 months immediately preceding the start of the loan period.
d) A new exemption to cover the supply of a family member to an agricultural business where it relates to the provision of a service.
e) An increase in the threshold for the supply of specialist workers from 1 to 4.
f) A new exclusion for supplies of labour between corporate bodies under the same ownership from licensing.

5. During the work on drafting of the revised Regulations, three other issues have arisen which also need to be addressed by amendments. These are

- Clarification of the definition of "catering establishment" to ensure that it meets the original intention of the exclusion.
  Clarification of the definition of "wholesale establishment" to close a potential loophole for abuse.
- Resolution of an anomaly which excludes an immediate provider of agricultural and other contractors from requiring a gangmaster licence where the provider is also supplying machinery, but requires that a person one step higher up the labour chain, involved in arranging and providing the specifications for the work, should be licensed

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Costs and Benefits

Benefits

6. The principal benefit stemming from a relaxation in the terms of the Exclusion Regulations is that it should provide greater flexibility for farmers engaged in informal agricultural practices, such as the loan of workers to other farmers. Revising the terms of the regulations is also intended to provide greater clarity to those labour providers uncertain as to their status under the scheme. This will enable people to carry out their businesses secure in the knowledge that either they are not contravening the legislation, or that they need to obtain a licence. Where the new Regulations confirm that a licence is not required there will be a financial benefit in the annual saving to licence holders of not having to renew their licences. However this is likely to be limited as few gangmasters are currently licensed under the circumstances covered by the proposed amendments. In particular, according to the GLA no farmers have applied for a licence in respect of the loan of workers to other farmers and the GLA is not aware of any agencies involved in the supply of specialist workers. However, the amendment to increase the threshold in the supply of specialist workers may be of benefit to gangmasters in the forestry sector. There are currently around 50 gangmasters licensed to supply workers in this sector and we estimate that the amendment could benefit between 0 – 10 labour providers. Similarly the new provision to exclude the supply of family members could also benefit between 0 – 10 labour providers. The GLA is also aware that one gangmaster is already licensed in respect of the supply of workers between corporate bodies within the same ownership and this amendment my benefit up to 5 licence holders. Likewise there is already one labour provider who is currently licensed who will benefit from the exclusion for the person one step up the supply chain and again this exclusion may benefit up to 5 licence holders.

7. A summary of the potential financial benefits is as follows:

Proposed amendment	**Number of current licence holders**	**Value of one-off benefit**	**Value of annual benefit**
Changes to definitions	N/A	0	0
Short term farmer to farmer loans	0	0	0
Short farmer to farmer services	0	0	0
Supply of a family member	0 - 10	0	0 - 4,000*
Supply of specialist workers	0 - 10		0 – 4,000*
Exclusion for corporate bodies	0 - 5	0	0 – 13,000*
New exclusion for person one step up the supply chain where labour provider supplies machinery and directly employs worker	0 - 5	0	0 – 2,000*
Totals	0 - 30	0	0 – 23,000

*based on an annual licence fee of £2,600 for supply between corporate bodies and £400 for supply of a family member, specialist workers and the use of a worker to operate machinery where the worker is employed by a third party service provider.

8. There could be potential minor administrative savings to the GLA and to former licensees no longer required to renew their annual licences, but this will be negligible. Greater clarity in the Regulations should also avoid costly challenges to the interpretation of the legislation, but it is not possible to quantify the potential cost benefit.s

Costs

9. It is not expected that the proposal will impose any substantial costs on businesses. The purpose of the amendments are to clarify the terms of the Regulations and to remove from the scope of licensing those activities which do not represent gangmaster activity.

10. It is possible that the removal of some gangmasters from the scope of licensing could lead to an increase in licence fees as the GLA is required to cover the cost of operating the licensing system through income from fees. However, it is thought that the fee increase required to cover the loss of fee income would be marginal. On the basis of 1,168 labour providers holding a GLA licence and the assumption that other GLA costs and revenues remain unchanged, in theory the loss of the fee income would need to be recouped by an average fee increase of up to £ 20. In practice, it is not envisage that there would need to be an increase in fee levels, as the GLA have proved successful in holding down costs and there has been no increase in fee levels for 2010/2011.

Business Sectors affected

11. The gangmaster licensing scheme applies to labour providers who supply labour into the agriculture, shellfish gathering and the food, fish and shellfish processing and packaging sectors in the UK.

Small Firms Impact Test

12. The gangmaster industry is largely made up of small firms. Therefore small firms will be the main beneficiary of any proposal to reduce the scope of the licensing scheme by revising the Exclusions Regulations.

Competition Assessment

13.The proposal is not expected to have any effect on competition.

Equality and Fairness

14. The proposal will not have any impact on under-represented groups.

Human Rights

15. The proposal does not raise any human rights issues

Scotland, Wales and Northern Ireland

16. The Gangmasters Licensing (Exclusions) Regulations 2006 apply to England, Scotland and Wales. Separate regulations apply to gangmasters operating in Northern Ireland.

Impact on rural communities, environmental impact, sustainable development

17. No impact on rural communities or the environment is expected. The proposal will be neutral with respect to sustainable development.

Enforcement, sanctions and legal aid

18. The Gangmasters (Licensing) Act 2004 established the GLA to operate a licensing scheme for gangmasters and to maintain a register of licensed gangmasters. The principal offences created by the Act are operating as an unlicensed gangmaster, engaging the service of an unlicensed gangmaster and using false documents. The maximum penalty created by the act is imprisonment of up to 10 years. There are no recommendations in this proposal to change these offences and sanctions and there are no implications for legal aid.

19. The amendments will not affect the overall cost of enforcement and therefore the £ 2.16 million allocated to enforcement costs would remain unchanged.

Monitoring and Review

20. The GLA is required to keep the operation of the licensing regime under review. Any further evidence on costs and benefits emerging from these reviews will be thoroughly evaluated.

Summary

21. This proposal is expected to generate minor financial benefits to the industry and to impose no cost on Government. The principal purpose of the proposal is to clarify the operation of the Exclusion Regulations and to give some wider flexibility where there is no risk of worker exploitation. The proposal is not intended to make fundamental changes to the scope of the licensing scheme.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	*Results in Evidence Base?*	*Results annexed?*
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	Yes	No
Carbon Assessment	Yes	No
Other Environment	Yes	No
Health Impact Assessment	Yes	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes	No
Rural Proofing	Yes	No

Annexes

Annex 1 - Summary and analysis of the responses to the Consultation on the Operation of the Gangmasters Licensing (Exclusions) Regulations 2006

A summary and analysis of the key points raised in responses to the questions posed in the consultation document are set out below.

Q1. Do you agree that the definitions used in the Regulations convey accurately the terms used?

A small number of respondents questioned the relevance of the term "produce" in the context of shell fisheries. The use of "products" was proposed as an alternative term. However the current definition refers to "produce from agricultural work" and "products derived from shellfish or fish". Therefore we concluded that the existing definition already recognizes the position of the shellfish sector. In addition, we are not convinced that it would make any significant difference in clarity by replacing a definition of "produce" with one for "products" and consequently do not propose to make any amendment on this point.

Q2. If not, which definitions need further clarification, and why?

In addition to the change suggested above, there were several proposals for further changes to the definitions in the Regulations, however, many of these fell outside the scope of the consultation. Those which did not included the suggestion that the definition of "farmer" be clarified because, it was argued, as it is currently phrased it could encompass someone operating as a labour provider. While this was considered we felt that the definition should be retained in its present form as there is no evidence that this loophole has been exploited up to the present time. We are also concerned that changing the wording of the definition might not necessarily result in more clarity and could open up the possibility of the revised definition could resulting in new loopholes in the future. It was also suggested that Regulation 2 be amended to end the exemption for food processing and packaging undertaken in wholesale markets. However the proposal represents a substantive change to the scope of the licensing scheme and is outside the scope of the consultation. A further proposal in response to this question concerned the introduction of a new exemption to cover the supply of a family member to an agricultural business where this was undertaken in connection with the provision of a service. It was argued that this would allow the practice, often engaged in by small agricultural contractors, of calling upon the support of an immediate relative at peak times. This would appear to represent a reasonable change to the regulations, allowing small contractors to carry on an established work practice without the need to obtain a license. Limiting the exemption to the supply of labour in connection with the provision of a service would minimize the risk of exploitation by gang labour providers.

Q3. Do you think the definition of "share farming agreement" is too restrictive? If so, how do you think it should be changed?

The consultation document suggested that this definition should be replaced by one where the receipts shared are "net", as share farming agreements usually share net receipts for the purpose of creating a group working structure, but without incurring the need to form a partnership. There was only one respondent on this point, and

their view was that the inclusion of the word “net” would not add anything to the definition. However, we are still concerned that the definition needs refinement and we believe that this could be achieved by removing the word “gross”.

Q4. Do you consider that the 20% rule restricts the flexible operation of mainstream farming practices involving the loan of workers between farmers? If your answer is yes, do you have evidence to support your response?

Q5. Do you think that the terms of the exclusion for farmer to farmer loans of workers should be relaxed? If so, why and how?

Several respondents were keen to see a relaxation of the current maximum loan length of 20% of the hours worked by the worker in the 3 months immediately prior to the start of the period. There were two broadly similar proposals to relax the current rules. Both involved increasing the number of months over which the percentage of hours worked can be reckoned as well as raising the percentage used to arrive at the maximum number of hours to be worked when on loan. In both sets of proposals the period over which the number of hours worked would be reckoned is 12 months. The majority of respondents suggested changing the maximum loan period from 20% to 30 % of the total number of hours worked however a small number were keen for the percentage to be raised to 50%. We therefore propose to increase the maximum farmer to farmer loan length for each worker from 20% to 30% of the total hours worked in the 12 months immediately prior to the start of the loan period.

Q6. Should the terms of the exclusion for farmer to farmer loans be extended to short-term loans of workers to undertake non-agricultural activities covered by the Act?

A number of respondents were in favour of a relaxation of this restriction to allow loans of workers to carry out non-agricultural work to take place on the same site, for example between agricultural and pack house activities. However, these circumstances would be accommodated by introducing an exclusion which would permit the supply of labour between corporate bodies under the same ownership without a license. If this change were to be made it is unlikely that there would be a real need to extend the exclusion for farmer to farmer loans to cover non-agricultural activities covered by the Act.

Q7. Do you agree that the terms of the Exclusions contained at sub-paragraphs 4(a) and 4(c) should remain unchanged? If not, why?

These sub-paragraphs refer to the circumstances under which farmer to farmer loans can take place without a licence where the farmers are (i) working under a share farming agreement or (ii) where the worker being loaned has been supplied to the loaning farmer by a licensed gangmaster. Only one respondent replied to this question, expressing the view that these sub paragraphs should remain unchanged. Consequently we intend to retain these provisions in their current form.

Q8). Does the 20% rule restrict the flexible operation of traditional farming practices involving the supply of services? If your answer is yes, what evidence do you have to support your response?

Q9. Do you think that the terms of the exclusion for the supply of services between farmers should be changed? If so, why and how?

There was a broad consensus in favour of relaxing the restrictions on the loan of workers in connection with the provision of a service. One respondent favoured extending the period over which the 20% rule is used to calculate the maximum number of hours a worker can be loaned for from 3 months to 12 months. Another agreed and also suggested increasing the percentage to 30%, and in addition, to raising the maximum term of any loan from two weeks to four weeks. This respondent argued that the current restrictions hinder long term shared activity such as the hire and use of expensive machinery for sugar beet and pea harvesting. Many other respondents suggested that the terms of the exclusion should be relaxed in the line with those proposed for farmer to farmer loans. All agreed that a relaxation of the restrictions here would introduce greater flexibility in the management of resources during peaks of activity.

Q10. Do you agree that there is a need to review the wording of the exclusion to make it clear that the provisions of the exclusion are interdependent?

Only 3 respondents felt that there was a need for clarification. As a consequence, we do not intend to introduce any changes at this stage.

Q11. Is the current threshold of one worker supplied at any one time too low? If it is what should it be changed to and why?

The Regulations permit the supply of a worker to a farmer to undertake specialist agricultural work without a license provided the worker has certain minimum qualifications. Once supplied the worker must enter into employment with the labour user. The current exclusion only permits one such worker to be supplied to a particular farmer on any single day. Several respondents felt that this restriction was too tight. One thought the provision in its existing form may be restricting the development of adequate specialist labour supply channels. Suggestions for an increased cap on supply of specialists ranged from four to eight workers at any one time, and one respondent was in favour of ending the requirement that workers, once supplied, must become direct employees.

Increasing the threshold below which a labour provider would be excluded from the licensing scheme when supplying specialist labour does run the risk of opening up a legal loophole, especially if combined with a relaxation of the requirement that workers be employed by the labour user. However, there is clearly a perceived need for additional flexibility in this area as at present, an employer seeking to obtain more than one specialist worker must either stagger their recruitment or use the services of more than one agency. Therefore, it is recommended that the Regulations are amended to permit the supply of up to four workers to a particular labour use on any one day to undertake specialist agricultural work.

Q12. Should competences gained through experience also qualify for exclusion from licensing?

One respondent was in favour of extending the Regulations to include workers who have developed specialist skills in the course of work, but have gained no formal qualifications. However, was a minority view: more prevalent was the view that specialist workers should hold qualifications to a defined level. The work being carried out by the Agricultural Wages Board for England and Wales (AWB) on non-accredited qualifications/competencies was mentioned as a potential way for addressing this issue, however, there is as yet no satisfactory mechanism for identifying skills obtained "on the job", therefore we intend to retain this restriction for the foreseeable future.

Q13. Should the requirement that the skilled worker supplied by a labour provider must be employed by the labour user be retained? If not, why not?

Support for this proposal was not widespread. The view was expressed that the requirement placed unnecessary restrictions on the employment opportunities available to skilled labour, however, others were concerned that any relaxation of the requirement that workers, once placed, are employed directly might lead labour providers to reclassify workers as skilled in order to circumvent regulation. While this is unlikely, the lack of any concerted support for this proposal means that this restriction is to be retained.

Q14. Do you agree that charities and public bodies used to deliver charitable services should be excluded from the gangmaster licensing arrangements?

Q15. Should there be a blanket exclusion for such organisations, or are there any organisations which you think should be retained within the scope of the scheme? If so, why?

Q16. Which organisation do you suggest should be excluded?

There was some support for including an exemption for public bodies and charities; however, it was not widespread. All who supported an exemption favoured selectivity rather than a blanket exclusion, for example, one respondent thought it should only apply if no commercial fee is charged. Another thought public bodies used by Government to deliver publicly funded services should also be excluded but argued for more caution in the case of charities. This was balanced by the view expressed by more than one respondent which was opposed to any exclusion for public bodies and charities, fearing that an exemption would create legal loopholes which could be exploited by unscrupulous employers. Charitable organisations are subject to the licensing regulations and would be required to obtain a license from the GLA to supply labour in the regulated sectors, however, the GLA adopts a pragmatic approach when dealing with them and it is unlikely that it would take disproportionate action where one was found to be non-compliant with the regulations.

In the absence of widespread support for total exclusion a selective approach to dealing with the licensing of public bodies and charities would present significant difficulties when phrasing a workable regulation. Therefore we do not propose to introduce any changes at this time.

Q17. Do you think that supplies between corporate bodies within the same ownership should be excluded from licensing?

Q18. If we excluded this circumstance do you think it would be easy for labour providers and users to restructure their activities in order to take advantage of this exclusion?

There was clear support among respondents for this proposal. Several respondents said they felt there would be little scope for labour providers to use an exclusion in this area to avoid the requirement to obtain a license. One respondent added that they thought it unlikely that companies would be willing to bear the additional costs and risk of long-term restructuring or mergers to avoid regulation.

While there is little concern in the industry that such an exclusion would present a loophole which could be exploited, we are aware that care will be needed when drafting revised regulations to ensure no opportunities for abuse arise. However, its introduction would allow employers greater flexibility to manage their workforce in order to cope with seasonal fluctuations in the availability of work. Therefore, we have decide that we will amend the Regulations to introduce an exclusion for the supply of workers between corporate bodies under the same ownership.

Q19. Do you think that arrangements – such as pea vine co-operatives or sugar beet co-operatives – where workers are loaned to the co-operative to undertake harvesting duties for the co-operative should be excluded from the licensing arrangements?

There was some support for the introduction of an exclusion for the loan of workers between members of a co-operative. Several respondents agreed that labour shared between members of a co-operative should be excluded from the scope of the licensing scheme. One went further, stating that an exclusion for co-operatives should apply to all undertakings which are co-operative in nature and not just to those registered as industrial and provident societies or community interest companies. It was also point out that the proposed exclusion could lead to an increase in the number of people permanently employed by co-op members. If introduced, this exclusion would permit greater flexibility by allowing members of co-op to pool their labour and redeploy it from farm to farm as needed. However, it would be difficult to phrase any regulation which would not allow a labour provider to enter into a co-operative arrangement with their customer to avoid the need to obtain a license. Therefore we do not intend to introduce a new exclusion at present. In the mean time, the difficulties currently faced by members of co-ops would be eased by the proposed relaxation of the restrictions on farmer to farmer loans of workers and services.

Q20. Do you think forestry should be removed from the scope of the licensing scheme? If yes, why?

Q21. Should licensing apply only to part of the forestry sector? If yes, to which activities should it apply?

There was no clear cut consensus for change among respondents. One respondent expressed the view that skilled labour should be excluded from the scheme and another thought that labour intensive activities should remain within the scheme. There was some, limited, support for the proposal to exclude forestry from those who believed that there was little or no evidence of exploitation in the sector. There was a general feeling that the supply of gang labour within the forestry sector should continue to be subject to licensing, while one off supply of labour should be exempt. This would introduce an additional element of flexibility but would be difficult to police in practice as there would be significant problems differentiating between the 2 types of supply. As a result of this we have concluded that forestry should remain within the scope of the licensing scheme.