EXPLANATORY MEMORANDUM TO

THE GANGMASTERS LICENSING (EXCLUSIONS) REGULATIONS 2013

2013 No. 2216

1. This explanatory memorandum has been prepared by the Department for the 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 2010 ("the 2010 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 gangmasters' licence.

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

3.1 None

4. Legislative Context

4.1 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).

4.3 The 2010 Regulations fine tune the scope of the licensing arrangements, by specifying circumstances where a person does not need to obtain a gangmasters' licence. This instrument amends the 2010 Regulations to clarify the existing circumstances, and

provide for new circumstances, in which a person does not require a gangmasters' licence. This SI implements one of the outcomes of the Red Tape Challenge (RTC) review of the Gangmaster Licensing Authority (GLA).

4.4 An exclusion from licensing made under section 6.2 of the 2004 Act may be revoked if evidence emerges that workers face an increased risk of exploitation.

5. Territorial Extent and Application

5.1 This instrument applies 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 The 2010 and previous Regulations exclude from gangmaster licensing activities which are considered to represent little risk of worker exploitation.

7.2 Exclusions to the scope of the 2004 Act were originally set out in the Gangmasters Licensing (Exclusions) Regulations 2006 ("the 2006 Regulations"). When the 2006 Regulations were made, Ministers gave a commitment to review the operation of the Gangmaster Licensing Scheme periodically. A public consultation in the summer of 2008 led to the introduction of the 2010 Regulations in April that year.

7.3 In late summer 2011 the Government launched the RTC review of employment law and associated regulation. This phase of the review considered the operation of the GLA. The review looked at evidence from a number of different sources including the GLA, the Farming Regulation Taskforce, the Forestry Regulation Taskforce and took account of the GLA's own operational data.

7.4 The RTC review concluded that the GLA performed an important role in protecting vulnerable workers in the regulated sectors from exploitation in the workplace. However, the review also concluded that the GLA should focus on protecting the most vulnerable workers and devote more of its resources to dealing with criminal gangmasters, and that low risk activities should be removed from the scope of the licensing scheme.

7.5 In May 2012 the Government announced a number of measures to achieve this rebalancing of the GLA's operational focus. Included among these was a proposal to remove from the scope of licensing a number of activities for which one is currently required. The activities to be excluded from GLA licensing are set out in the Schedule to the Gangmasters Licensing (Exclusions) Regulations 2013 ("the Schedule"). A number of small amendments have been made to wording of exclusion introduced in 2006 and

2010 Regulations to introduce greater clarity and to the wording meets current drafting standards. They changes are described in the following paragraphs.

7.6 A note has been added at the end of Part 1 of the Schedule which makes clear that the daily cleaning and maintenance of machinery used to process and pack food falls within the scope of licensing. This is to distinguish it from more intensive cleaning and maintenance which is not covered by gangmaster licensing.

7.7 Paragraph 14 of the Schedule provides for an exclusion from licensing for the supply of an apprentice by an Apprenticeship Training Agency (ATA) in England and Wales. A similar exclusion will be considered for Scotland should the Scottish Government decide to adopt the ATA model.

7.8 Paragraph 17 of the Schedule provides for an exclusion from licensing for the use of a worker by a land agent to undertake work on land which the agent is contracted to manage. The land agent must be a member of the Royal Institute of Chartered surveyors and the work undertaken must be in fulfilment of the agent's contract to manage the land.

7.9 Paragraph 18 of the Schedule introduces an exclusion for farmers who use workers, either directly employed by them or who have been supplied to them by a licensed gangmaster, to grow crops or raise livestock where the crops and livestock on behalf of a third party. The exclusion would only apply where ownership of the crops or livestock remains with the third party.

7.10 Paragraph 19 permits the use and supply of volunteers to carry out conservation work on agricultural land without the need for a gangmasters licence.

7.11 Paragraph 20 introduces an exclusion from licensing for the use of a worker in connection with the provision of a service to a third party in the forestry sector. The exclusion has been introduced in recognition of the burden licensing places on small and medium contractors operating in a sector which the GLA recognises as presenting a low risk of worker exploitation.

7.12 Paragraph 21 makes an exclusion from licensing for the use by a veterinary practice of workers without a veterinary qualification to deliver services related to the health and wellbeing of livestock. This includes foot trimming, dehorning and the collection of samples for medical analysis.

7.13 Paragraph 22 permits the suppliers of agricultural vaccines to use workers to administer those vaccines without needing a gangmaster licence.

7.14 Paragraph 23 makes provision for an exclusion from licensing for the supply or use of a worker to determine the sex of chickens and other poultry.

7.15 Paragraph 24 removes from the scope of licensing businesses and other organisations which provide services to Government connected with the return of the disabled and the long-term unemployed to work.

7.16 Paragraph 25 has been amended to make clear that a farmer must occupy land which they use for agriculture. This replaces the definition of "farmer" in the 2010 Regulations which was ambiguous.

7.17 Paragraph 26(2) provides for an exclusion from licensing for the use of workers by shellfish cultivators to gather shellfish. The gathering of wild shellfish will continue to be regulated by the Gangmaster Licensing Authority.

7.18 Paragraph 26(3) introduces an exclusion from licensing for the owner or operator of a shellfish hatchery.

7.19 Paragraph 27 has been amended to remove ambiguity and to bring the wording up to current draft standards.

7.20 Paragraph 28 introduces an exclusion from licensing for the use of a worker by a partnership in Scotland where that worker is a partner in the business. This equalise the treatment of partners in a business constituted under Scottish Law with their counterparts in the rest of the GB.

8. Consultation outcome

8.1 The Defra consultation on legislative changes to the operations of the Gangmasters Licensing Authority ran for eight weeks from 26 April and closed on June 21. One hundred responses were received. Some two thirds of these were from forestry stakeholders supporting the exclusion of the sector from licensing.

8.2 As well as publication of the consultation documents in the online survey a stakeholder workshop was convened attended by representatives from key stakeholders including many of the organisations currently represented on the GLA Board.

8.3 Overall there was an acknowledgement of the need to lift unnecessary burdens on business by removing low risk sectors from licensing and strong support for excluding forestry.

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 2010 Regulations will be made available on the GLA 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 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

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 2010 Regulations.

12. Monitoring & review

12.1 The GLA is required to monitor the operation of the Licensing Scheme. The Authority will continue to track the activities of rogue operators through links with partner enforcement bodies and via its own intelligence systems.

12.2 The Exclusions Regulations are subject to review. If there is evidence of an increased risk of worker exploitation in any of the areas benefiting from an exclusion from GLA licensing the 2004 Act permits the Secretary of State to amend the Exclusions Regulations to remove it.

13. Contact

Stephen Moorcroft at the Department for Environment, Food and Rural Affairs Tel: 020 7238 6295 or email: stephen.moorcroft@defra.gsi.gov.uk can answer any queries regarding the instrument.