Draft Regulations laid before Parliament under section 25(5) of the Gangmasters (Licensing) Act 2004, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2005 No.

EMPLOYMENT

The Gangmasters (Licensing Authority) Regulations 2005

Made - - - -	*[ ] 2005*
Coming into force - -	*1st April 2005*

The Secretary of State, in exercise of the powers conferred upon her by sections 1(5) and 25(2) of the Gangmasters (Licensing) Act 2004 (**1**), makes the following Regulations, a draft of which has been approved by a resolution of each House of Parliament:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Gangmasters (Licensing Authority) Regulations 2005, and shall come into force on 1st April 2005.

(2) In these Regulations—

"the 1973 Act" means the Employment Agencies Act 1973 (**2**);

"the 2004 Act" means the Gangmasters (Licensing) Act 2004;

"the Board" means the Board established by regulation 3(1);

"the chairman" means the chairman appointed pursuant to regulation 4(2);

"committee" means a committee established by the Board pursuant to regulation 6(1).

"the deputy chairman" means a deputy chairman appointed pursuant to regulation 4(3);

"*ex officio* member" means a member of the Board appointed pursuant to regulation 4(9);

"representative member" means a person appointed as a representative member of the Board pursuant to regulation 4(6);

Body corporate and application of seal

2.—(1) The Authority shall be a body corporate.

(2) The application of the seal of the Authority shall be authenticated by the signature of—

(**1**) 2004 c.11.
(**2**) 1973 c. 35.

(a) the chairman, or the deputy chairman acting in the absence of the chairman; or

(b) any other person who has been authorised by the Board (whether generally or specially) for that purpose.

(3) A document purporting to be—

(a) duly executed by the Authority under its seal,

(b) issued by the Authority, or

(c) signed on its behalf,

shall be received in evidence and shall, unless the contrary is proved, be taken to be so executed, issued or signed.

Role of the Board

3.—(1) The Authority shall have a Board which shall direct its affairs.

(2) The Board shall ensure that the Authority properly discharges its functions and complies with the requirements of these Regulations.

Membership of the Board

4.—(1) The members of the Board shall consist of a chairman, and not more than –

(a) nineteen representative members, and

(b) nine *ex officio* members.

(2) The chairman shall be appointed by the Secretary of State in consultation with the Minister of Agriculture and Rural Development for Northern Ireland.

(3) Within three months of the date on which the Authority commences operations and at the first Board meeting after every third anniversary of that date, the Board shall appoint a representative member to be the deputy chairman, who shall act as the chairman in the absence of the chairman.

(4) Should the deputy chairman resign from his post as deputy chairman, the Board shall appoint a replacement to act as deputy chairman until the next deputy chairman is appointed under paragraph (3).

(5) Resignation by a deputy chairman from his post as a representative member shall be taken to be a resignation from his post as deputy chairman.

(6) Subject to paragraph (8), the representative members shall be appointed by the Secretary of State on the nomination of an organization specified in column 1 of Schedule 1 in accordance with paragraph (7).

(7) An organization specified in column 1 of Schedule 1 may nominate such number of persons for appointment as representative members as is specified in relation to that organization in column 2 of Schedule 1.

(8) In the event that an organization specified in Schedule 1 fails, within such reasonable period as the Secretary of State may direct, to nominate the number of persons which by virtue of paragraph (7) it is entitled to nominate, the Secretary of State shall supply the shortfall by appointing such persons as she considers appropriate having regard to the nature of the organization which is otherwise entitled by paragraph (6) to make the nomination.

(9) The *ex officio* members shall be appointed by the persons specified in column 1 of Schedule 2 in accordance with paragraph (10).

(10) A person specified in column 1 of Schedule 2 shall appoint such number of *ex officio* members as is specified in relation to that person in column 2 of Schedule 2.

(11) Each representative member and each *ex officio* member shall at all times act in the interests of promoting the proper exercise by the Authority of its functions.

(12) The Ethical Trading Initiative may send a representative to attend any meeting of the Board as an observer, who may contribute to discussion at the invitation of the chair.

(13) In paragraph (12), the "Ethical Trading Initiative" means the company of that name limited by guarantee and incorporated on 9th June 1988.

Tenure of office and remuneration of the Board

5.—(1) Subject to the provisions of this regulation, the chairman and each representative member of the Board shall hold and vacate office in accordance with the terms of their respective appointments.

(2) At the end of the period of appointment, the chairman and each representative member shall continue to hold office until the appointment of his successor takes effect.

(3) The chairman or a representative member may resign from office by notice in writing to the Secretary of State and, upon his resignation, shall send a copy of the notice to the secretary to the Board and (except where he was appointed pursuant to regulation 4(8)) the organization by whom he was nominated for appointment.

(4) The Secretary of State may remove the chairman or any representative member from office if—

(a) he has without reasonable excuse failed adequately to carry out his functions as chairman or representative member (as the case may be), provided that –

(i) he has been given written notice warning him that, unless within a specified period his performance in a specified respect has improved to a specified extent, or to the satisfaction of the Secretary of State, he may be removed from office at the end of that period; and

(ii) at the expiry of the period specified in the notice, his performance in the respect specified has not improved to the extent required;

(b) without reasonable excuse, he has been absent from three consecutive meetings of the Board;

(c) he has been convicted (whether before or after his appointment or nomination) of a criminal offence and that conviction is not spent for the purposes of the Rehabilitation of Offenders Act 1974(**3**);

(d) he is an undischarged bankrupt or his estate has been sequestrated and it has not been discharged, or he has made an arrangement with his creditors, or he is subject to a bankruptcy restriction order;

(e) he is disqualified from acting as a company director;

(f) he has failed to comply with the terms of his appointment or nomination; or

(g) he is otherwise unable or unfit to carry out his functions as a representative member or (as the case may be) as chairman.

(5) The Secretary of State shall inform the appropriate nominating organization of her intention to remove a representative member pursuant to paragraph (4).

(6) The Secretary of State shall consult the Minister of Agriculture and Rural Development for Northern Ireland before removing the chairman pursuant to paragraph (4).

(**3**) 1974 c. 53.

(7) The Authority shall pay to the members of the Board, and any persons invited to attend a meeting of the Board, such remuneration and allowances as the Secretary of State may determine.

(8) The Board shall appoint an employee of the Authority to be the secretary to the Board.

Committees of the Board

6.—(1) The Board may establish committees and shall appoint the members of any committee it establishes from the members of the Board.

(2) The Board may, to such extent as it may determine, delegate such matters as it considers appropriate to a committee established under paragraph (1).

(3) The Board shall appoint a chairman for each committee and shall determine the quorum and voting arrangements for each committee.

(4) The Authority shall pay to any members of the committee or any persons invited to attend a meeting of the committee such remuneration and allowances as the Secretary of State may determine.

Liaison groups

7.—(1) The Board may establish liaison groups to do any of the following—

(a) to provide advice to the Board on the operation of the 2004 Act and any Regulations or rules made under it, the extent of compliance with any requirements imposed under the 2004 Act and the effectiveness of any such requirements;

(b) to assist the Board in keeping under review the activities of persons who act as gangmasters; and

(c) to provide a forum for communication between the Board and other persons.

(2) Membership of each liaison group shall be at the discretion of the Board.

(3) Each liaison group shall be chaired by a member of the Board.

(4) The Board shall set the terms of reference for each liaison group.

(5) The Authority may determine the level of remuneration and allowances paid to members of liaison groups, subject to the approval of the Secretary of State.

Proceedings of the Board

8.—(1) Subject to the following provisions of this regulation, the Board may regulate—

(a) its own procedure; and

(b) the procedure of its committees.

(2) Subject to paragraph (3), a meeting of the Board shall not be properly constituted unless it is attended for the period of its duration by the chairman, or in his absence the deputy chairman, and at least one half of the representative members.

(3) The quorum may be changed by a motion supported by at least five members of the Board, provided that any new quorum includes the chairman, or in his absence the deputy chairman.

(4) Subject to paragraph (5), a decision to be taken by the Board shall be based on a simple majority of those voting members (including the chairman, or the deputy chairman in the chairman's absence) present at the time the vote is taken.

(5) If the voting members are equally divided, the chairman, or in his absence the deputy chairman, shall have a casting vote, provided that his reasons for casting his vote in the manner chosen are made known to the Board and recorded in the minutes.

(6) The validity of any proceedings of the Board, or any of its committees, shall not be affected by—

(a) any vacancy among the members of the Board or its committees;

(b) any vacancy in the office of the chairman of the Board;

(c) any defect in the appointment or nomination of any member of the Board;

(d) any defect in the appointment of the chairman or deputy chairman of the Board; or

(e) any defect in the appointment of any member or chairman of a committee.

(7) If the chairman, is in any way directly or indirectly interested in a matter to be discussed or decided by the Board, he shall, as soon as possible after the relevant circumstances have come to his knowledge, disclose the nature of this interest to a meeting of the Board, and shall not take part in any discussion or decision with respect to that matter.

(8) Where paragraph (7) applies, the deputy chairman (or, in his absence, a representative member agreed by the Board) shall act as chairman during that part of the meeting when the matter at issue is being discussed or determined.

(9) If the deputy chairman, while acting as chairman, is in any way directly or indirectly interested in a matter to be discussed or decided by the Board, he shall, as soon as possible after the relevant circumstances have come to his knowledge, disclose the nature of this interest to a meeting of the Board, and shall not take part in any discussion or decision with respect to that matter.

(10) Where paragraph (9) applies, a representative member agreed by the Board shall act as chairman during that part of the meeting when the matter at issue is being discussed or determined.

(11) Any disclosure made under paragraph (7) or (9) shall be recorded in the minutes of the Board.

Record of proceedings

9. The Board must make arrangements for the keeping of proper records of the following—

(a) its proceedings;

(b) the proceedings of its liaison groups; and

(c) the proceedings of its committees.

Staff of the Authority

10.—(1) The Authority shall employ a chief executive who shall be responsible to the Board for carrying out the Authority's functions and the management of its employees.

(2) The Secretary of State shall appoint the first chief executive, on such terms and conditions as he may determine.

(3) The Board shall appoint each subsequent chief executive, but before doing so, shall obtain the approval of the Secretary of State as to the suitability of the person to be appointed and the terms and conditions of the appointment.

(4) The Authority shall employ such other staff as it thinks fit on terms and conditions determined by the Board and approved by the Secretary of State.

Remuneration etc. of employees, agents or consultants

11.—(1) The Authority shall pay its employees, agents or consultants such remuneration and allowances as it may, with the consent of the Secretary of State, determine.

(2) The Authority shall—