

Response to DEFRA Consultation Document on Gangmasters (Licensing) Authority Regulations

13 October 2004

Introduction

1. On 30 July 2004 Defra published a consultation document on The Gangmasters (Licensing Authority) Regulations 2004. The Regulations are concerned with the structure and operation of the Authority to be established under the Gangmasters (Licensing) Act 2004 to implement the regulatory regime for labour providers. Comments are invited by 29 October 2004.

2. This paper sets out the response of the Association of Labour Providers. The Association was established in February 2004 by a group of labour providers that wished to contribute to an improvement in standards in the industry. The Association currently has 30 members. While this is a small number in relation to the total number of labour providers it marks a significant improvement on the position that previously applied whereby there was no representative body for the industry. The Association is generally accepted as the representative body for labour providers and has also been a party to the code of practice for labour providers drawn up under the auspices of the Ethical Trading Initiative. Compliance with this code of practice is a condition of membership of the Association.

Executive summary

3. The proposed constitution of the Board is unsatisfactory. A Board of 23 members nominated by 14 or more different organisations is no way to run a regulatory body. There is no known recent precedent for such an arrangement. The Board should comprise a smaller number members acting as a unitary body, the members being selected so that between them they have the necessary range of backgrounds, experience and skills to be effective.

4. The Board should be free to determine what liaison committees it wishes to establish. A single committee is likely to be more effective than three separate committees. This would continue the existing coalition which supported the legislation and developed the code of practice.

5. The Draft Regulations are unduly prescriptive.

6. The costings are based on 4,000 licences being issued. This figure may well be too high. If this is the case there would be serious implications for the finances of the Authority.

The proposals - a summary

7. The Draft Regulations envisage that the Authority will be structured and operate as follows –

- There will be a Board comprising an independent chair and deputy chair and between 13 and 23 “representative” members nominated by various stakeholders including labour providers, farmers, unions, supermarkets and government departments.
- An Executive will be created which will have its own distinct remit to carry out the Authority’s functions.
- The Authority will be required to establish three liaison groups, for labour providers, labour users and enforcement agencies. These are intended to provide a channel for communication between the Authority and those involved in these three areas of activity.

- The Authority will be given statutory objectives, in particular to ensure that a person who is licensed to act as a gangmaster does not exploit his or her workers and that he or she complies with the relevant legislation.
- The Act allows provisional licences to be granted both when the new arrangements come into effect and in respect of newly established organisations.
- The budget for the Licensing Authority is based on there being 4,000 registered labour providers at any one time, with most of the cost being variable relating to the compliance audits. On the basis of a licence lasting for three years with one audit in this period, these figures imply an annual licence cost of £750.

Key points

8. The Association's main concern is that the proposed size and structure of the Authority will not make it either an efficient or a fair regulator for labour providers. Other major concerns relate to the prescriptive nature of the Draft Regulations, confusion between the Authority itself, its Board and the Executive, and the cost estimates, which the Association believes may be materially unrealistic. These points are considered in turn.

Size and composition of the Board

9. The Association is keen to see an effective regulatory Authority capable of regulating a complex activity which has not previously been regulated, in a manner which is both fair and cost efficient. The proposed structure of the Licensing Authority is not best suited to achieve this.

10. One would have expected the structure of the Authority to take into account experience with other regulatory bodies of which there are a very large number. This experience has been either discounted or ignored. (Appendix 1 to this response sets out basic details about the structure of regulatory bodies that have recently been established and demonstrates that what is being proposed has no precedent.) What is proposed is not only untested but is unsustainable in theory. Good practice now is for regulatory bodies to operate in accordance with best corporate governance principles. This means boards comprising a relatively small number of people, most of whom are independent of the businesses being regulated, and selected by a formal process so that between them they have the necessary balance of experience and skills. Interest groups have their input through direct representations by trade associations and other representative bodies and often through formal or informal liaison committees. What is envisaged is for the Board of the Authority to comprise as many as 25 people with a minimum of 15; just two of these would be independent, the chairman and the deputy chairman. The remainder would be appointed by various interest groups, 14 of which are identified in the Schedule to the Draft Regulations. This is contrary to best governance practice. The Board would not be selected so as to have the necessary balance of expertise, experience and background, but rather would comprise people appointed by no less than 14 or more organisations. This could result in the only regulatory board comprised almost entirely of white middle aged men and with significant gaps in respect of skills and competences. The Consultative Document makes it clear that these people would be representative, but good practice is that members of a board of a regulatory body act as precisely as members of a unitary board, not representing sectional interests. The task of the chairman in this respect becomes very difficult, if not impossible, particularly as it is envisaged that he or she will be paid just £15,000 a year.

11. The letter accompanying the Consultation Document states that in the discussions while the Bill going through Parliament, Ministers and the key stakeholders "agreed that the Authority should be run by a Board involving key Stakeholders, Government and enforcement interests". It is not clear what the authority is for stating that this was an agreement. The ALP, which represents the organisations being regulated, was not a party to any such agreement. There was no opportunity to discuss the composition of the Board while the Bill was going through

Parliament; that discussion needs to take place now. The RIA comments that “The establishment of a small board of independent members was considered but rejected as such an approach would not lead to meaningful stakeholder engagement in the licensing process.” There is no analysis to support this assertion which is contrary to the conclusions reached by Government in respect of other regulatory bodies.

12. Interestingly, the Draft Regulations require the Authority to establish liaison groups for labour providers, labour users and enforcement bodies so as to ensure that the Authority is adequately informed. This is also the purpose of the representative members of the Board itself. This is unnecessary duplication and would lead to considerable confusion. There is no known precedent for this sort of arrangement. It is also unacceptable that worker representatives and advice agencies are excluded from the liaison arrangements.

13. If there is to be a Board comprising representative interests then the structure proposed in the Schedule to the Draft Regulations is inappropriate. Broadly speaking, it is envisaged that labour providers, the subject of the legislation, would be able to nominate just two members while their customers would be able to nominate no fewer than six (two farmer representatives, one from supermarkets, one from wholesalers and two from processors). If there is to be a representative board then labour providers should comprise about half the representative members so as to avoid a position where they can in effect be regulated by their customers.

14. The Association recognizes that Defra is committed to a board largely comprising representative of stakeholders. This commitment and the ALP’s concerns could be met by removing the Schedule and amending the regulation to provide for “between 13 and 21 representative members who shall be appointed by the Secretary of State so as collectively to represent the interests of labour providers, labour users, trades unions and advice agencies. The Board shall be able to co-opt members representing the enforcement agencies.” This meets the commitment given in Parliament which was: “.....members of the board-approximately 17 representatives-will be chosen for specific areas of expertise. That would mean representative from the industry – farmers, growers and trade unions –and from Government.....We envisage a board that has practical experience to inform the decisions that it makes.”

Prescriptive nature of the Draft Regulations

15. A competent regulatory authority should be able to a large extent to decide its own method of operation. The Draft Regulations in that respect are highly prescriptive. A useful comparator is the Private Security Industry Act 2001. This covers the scope and functions of the Security Industry Authority in fewer than a quarter of the words used for the Gangmasters Licensing Authority. For example, all that is said on the composition of the SIA is: “The Authority shall consist of such number of members as the Secretary of State may determine.”

16. The Draft Regulations give substantial powers to the Secretary of State to intervene in the affairs of the Authority which may make it difficult for the Authority to manage its business effectively. There are no fewer than 17 powers given to the Secretary of State. Some of these are fairly standard and in line with the position in other regulatory bodies but some seem unnecessary. For example:

- The requirement for a corporate plan to be approved by the Secretary of State before its publication, prior to the commencement of each financial year.
- Controls on the number of employees who may be employed in addition to controls over the size of the total budget.

17. Good corporate governance requires that organisations are run as a single entity. Ultimate responsibility must rest with the board. However, the Draft Regulations, in addition to giving substantial powers of intervention to the Secretary of State, stipulate different responsibilities for

the Board and the Executive from those of the Authority as a whole. This is in contrast to the normal position whereby the Authority itself would be given all the powers and it would be for the Board to decide how they were to be implemented. To illustrate the difficulty of what is being proposed Draft Regulation 7(5) requires that the secretary should be an employee of the Executive but other Regulations refer to the Authority as the employer of the staff.

The cost of the Authority

18. Information on the cost of the Authority is given in the Partial Regulatory Assessment, in particular Table 1, which sets out operating costs for the first five years of the operation of the Authority. These are based on a number of key assumptions:

- There will on average be 4,000 licensees, with 2,000 licences being issued in the first year, 2,400 in the second year, 500 in the third year and 2,000 again in the fourth year (reflecting the fact that licences would last for three years). The general assumption therefore is that there would be 500 new licensees each year but 500 existing licensees would also drop out.
- The fixed costs would be £664,000 in 2005/06 rising to £724,000 in 2009/10. Table 1 clearly envisages that the Authority will do everything in-house including maintaining its own computer hardware. A significant proportion of the fixed cost (£164,000 or 25% of the total in the first year) comprises the Board's secretariat costs, reflecting the bureaucratic structure that is envisaged. Variable costs are estimated at £3.7 million in year 1, £4.8 million in year 2, then falling to £1.85 million in year 3. This is on the basis of licences having a life of three years and with there being a single audit at the beginning of the licence period.
- The cost of the audit would be £1,500.

19. On the basis of these assumptions, the licence fee would be between £1,750 and £2,250 or between £585 and £750 a year.

20. The Association believes that these calculations are questionable. In particular –

- The assumption that there will be an average of 4,000 licence holders seems implausible. The Association's best estimate at present is that the figure is likely to be under 1,000. The final number will of course depend on the scope of the Act. If there are few exclusions then the number will be much higher – catching many organisations that could be forgiven for thinking that they would never be subject to legislation applying to “gangmasters”. If the scope is narrowed as seemed to be the original intention the number would be much smaller. The nature of the regulatory regime and the cost of the licence will also influence the number of organisations seeking licences. It is a characteristic of regulation that it helps determine the structure of an industry rather than simply reflecting it. The number of licensees has very material implications for the licence fee if it is intended that the Authority will break even.
- The Association believes that a single audit on which a three year licence would be granted would be ineffective, rather like giving Olympic athletes one drug test three years before the Olympics and then not doing another one until a year afterwards. Supermarkets that conduct audits of their suppliers do so on a minimum of an annual basis. If this is not done then disreputable labour providers would organize their business so as to be able to meet the initial test and then to run the business in an illegal way, probably undetectable over two years, before having to put arrangements in place for the next audit. The Authority will develop its own auditing arrangements. These are likely to include an initial audit as a prerequisite for obtaining a licence, regular returns of relevant information for desk analysis, themed inspections, for example of all labour providers in a specific area to ensure that the minimum wage is paid, and spot inspections for those labour providers deemed to

be “risky” on the basis of complaints, enforcement activity or the results of other monitoring exercises.

21. The overall result is that far from the cost being an average of £750 a year, a more likely figure would be over £1,300 if the current plan for £1,500 triennial audits is retained. If full audits were conducted annually the figure would rise to well over £2,000. The sort of regime described in the previous paragraph would probably lead to a slightly lower figure. However, anything near £2,000 would be unrealistic for labour providers. The Association would seek from government an assurance that the licence fee will be fixed initially with the government meeting any costs if the number of labour providers is less than envisaged in the Regulatory Impact Assessment.

22. The costings are examined in more detail in Appendix 2.

Detailed comments

23. This section comments on the individual paragraphs in the Draft Regulations and also answers the specific questions set out in the Consultation Document. Many of these have been covered in the previous section but are included here for ease of reference.

Regulation 2 - Constitution of the Authority

24. All references to an “Executive” should be removed from the Regulations so as to provide for the more normal arrangements of the regulatory body being a single organisation governed by the Board. Regulation 2 could then read “the Authority shall be governed by the Board”.

Regulation 3 - Liaison Groups (Question 1)

25. The point has already been made that the liaison groups seem to have the same function as the representative members of the Board. This section is in any event far too prescriptive. It should be for the Authority to decide what arrangements to put in place for liaison groups to complement the membership of the Board. Regulation 3 could then be reduced to “the Authority may establish a liaison group or groups to provide advice to the board on the operation of the Act and the Gangmasters’ Regulations and to assist the Board in keeping under review the activities of gangmasters.”

26. If it is wished to go ahead with the prescriptive approach then there are some detailed points:

- It would be preferable to have a single liaison group where issues could be discussed between the stakeholders rather than sectional positions being taken. To the extent that the Authority wished to talk with a particular interest group then this could be done in the normal course of business as other regulatory bodies do. The Security Industry Authority is a good model here.
- There seems no reason why each liaison group should be chaired by a member of the Board. This is not normal practice. It could put a member in a difficult position where the liaison group has a different view from that of the Board.
- As it is envisaged that the Board members will not be paid it is difficult to see why members of the liaison committees should be paid. It might be sensible to remove the reference to remuneration in Draft Regulation 3(4).
- Draft Regulation 3(6) puts impossible duties on the enforcement liaison group. It can only make the Board aware of the effect of the exercise of the Authority’s functions if it is properly consulted, and this is not within its gift. The Board must be responsible for understanding the consequences of its actions.

- The same point applies to Draft Regulation 3(7). This seems to allow the Board to pass the blame if anything goes wrong to the liaison groups. If it is intended to go ahead with this proposal then this Regulation should be turned round as follows: “The Board shall consult the Labour Provider Liaison Group and the Labour User Liaison Group in such a way as to help ensure that it is aware of the effect that any proposed exercise of its functions is likely to have on gangmasters and persons who use workers or services supplied by gangmasters.”
- The arrangements make no provision for worker representatives and for agencies such as the CABx which have first hand experience of dealing with problems. It is essential that they are embraced in the liaison arrangements.

Regulation 6 - Corporate Plan

27. Corporate plans do not relate to a year. Accordingly the word “corporate” should be removed from Draft Regulation 6(1).

28. There is no reason why an operating plan has to be formally approved by the Secretary of State. It also puts the Authority in a difficult position of being required to publish before the beginning of a financial year its plan and being dependent on the Secretary of State approving the plan. Regulation 6(1) should read “The Authority shall after consulting the Secretary of State publish a plan relating to its activities for each financial year prior to the commencement of that year”.

29. Provision needs to be made for the first year when clearly the Draft Regulation cannot be complied with.

30. Draft Regulation 6(2) requires one report to be published and a different report to be given to the Secretary of State. There is no need for two separate reports. The Secretary of State should commission his own report on the operations and effectiveness of the Authority.

Regulation 7 - Membership of the Board

31. The Consultation Document makes the point that the representative members shall be appointed by stakeholders “to represent their views”. Besides making the liaison groups superfluous this is thoroughly bad practice. The members of the Board must act as members of a unitary body not as representatives of particular interest groups. A board cannot work if the members have to go back to the group they represent to discover “views”. The members of a board must be there to exercise their judgement not to be mandated delegates.

32. The Association’s preferred position is that the Board should consist of between 5 and 8 members, each appointed by the Secretary of State in accordance with normal practice. This would then have the benefit of removing the need for a paid deputy chairman as one of the other members could easily take on this role. This could be done in such a way as meet the commitment (other than in respect of numbers) given in Parliament which was as follows:

“... members of the board-approximately 17 representatives-will be chosen for specific areas of expertise. That would mean representative from the industry – farmers, growers and trade unions –and from Government ... We envisage a board that has practical experience to inform the decisions that it makes.”

Such a board cannot be established when members are appointed by interest groups with no knowledge as to who the other members are. “Areas of expertise” and “experience” relate to skills and cannot be equated with being nominated by an interest group.

33. If Defra persists with its plan for the largest regulatory board currently in operation then the composition as set out in the Schedule is unreasonable. This provides for just two labour

providers whereas each group of their customers has their own representative and in some cases two representatives. There will be two farmer representatives, one supermarket representative, one wholesaler and two processors. This of course leaves out major groups, in particular retailers who are not supermarkets and the wholesale markets. Where regulatory boards do have representatives of those who are regulated it is more normal for these to comprise a significant proportion of the board, anything up to a half. There is no known precedent for customers of the regulated institutions outnumbering the regulated institutions themselves by three to one or for the regulated bodies to have under 10% of the total number of representative members.

34. The schedule has a number of other potential problems:

- Individual organisations are named but there is no guarantee that these organisations will continue in being or that they will be willing to nominate representatives to the Board.
- The nominated institutions may not necessarily be representative of their sector.
- It is noted that no organisation is stipulated for “processors”.
- “Packhouses” should be referred to rather than “wholesalers”
- There is an argument for the Health and Safety Executive being one of the government bodies which could nominate a member.
- It is difficult to see why the Police Superintendents’ Association should have the right to nominate. Presumably superintendents are responsible to chief constables.
- Citizens Advice Bureaux would not normally be counted as part of the voluntary sector. If it is wished to have a CAB representative then the sector should be described as advice agencies.
- The Schedule fails to comply with OCPA requirements. Representative bodies can be allowed only to nominate not appoint members of the Board. The wording at the top of the table in the Schedule needs to be changed accordingly. Two people must be nominated for each position with the Secretary of State choosing between them. This places both the nominating organisations and the Secretary of state in an invidious position – an inevitable consequence of the decision to have a representative board.

35. At the very least the Association hopes that the Schedule will be removed and that, for example, the Regulation could read something like “between 13 and 21 representative members who shall be appointed by the Secretary of State so as collectively to represent the interests of labour providers, labour users, trades unions and advice agencies. The Board shall be able to co-opt members representing the enforcement agencies.” This would give greater flexibility.

36. The confusion about the way that stakeholder interest will be represented is adequately demonstrated in the Regulatory Impact Assessment. Paragraph 7.3 states that “the Board composition outlined at paragraph 5.3 above (the chairman and deputy chairman and up to 21 other members) is considered to be the smallest possible consistent with adequate representation of the divers stakeholder interests involved in the Fresh Produce Supply and associated labour supply chain. The establishment of a small board of independent members was considered but rejected as such an approach would not lead to meaningful stakeholder engagement in the licensing process”. This clearly means that stakeholder engagement can be achieved only through Board representation. However, paragraph 7.4 immediately contradicts this by saying: “The proposed liaison group structure is considered to be the most effective way to ensure end user views are made known to the Authority and to ensure that the Authority maintains close contact with wider Government enforcement agencies at reasonable cost.” It is also worth noting that wherever there is a representative board there is inflation in respect of the number of members as

more and more people demand – and have to be given - representation. In the Committee Stage debate in Parliament the Minister referred to “approximately 17 representatives”, the Regulatory Impact Assessment refers to 21 representative members, and the Regulation itself allows for 23.

37. Draft Regulation 7(5) requires that the secretary may be an employee of the Executive. The Authority should be the employer (as it is in Draft Regulation 13(1)).

38. In summary the answers to the four specific questions are:

Q2 The proposed size of the Board is far too large to allow it to be effective. Its composition would be better described by reference to broad areas rather than individual organisations.

Q3 The labour providers are very poorly represented in the proposed structure. If the Board is to have interests groups represented, labour providers on they should comprise around half of those appointed to be representative.

Q4 The larger the size of the board, above say five, the less effective, more expensive and less able to attract good people it will be – like any other board.

Q5 There is a need for a deputy chairman but no reason why this function cannot be performed by a member of the board appointed as a representative member if this is the intention. If the concept of representative members is removed then any other member of the board can be appointed as deputy chairman with no need for payment.

Regulation 8 - Licensing Functions

39. The objectives the Authority is obliged to meet in determining licence conditions (Q6) are satisfactory.

40. The Association strongly opposes the concept of provisional licences when the new regime comes into effect. This is not something which is used by other regulators, a number having been badly caught by “grandfathering” provisions. The normal practice should be followed here, that is that institutions that wish to be authorised on the day on which it becomes an offence to operate without a licence will have to register their interest and apply a considerable period beforehand, perhaps as much as a year. This simply means that they register and does not mean that they should have anything resembling a licence. However, the arrangements for provisional licenses subsequently are necessary, otherwise it will be impossible for new labour providers to be established.

41. Paragraph 18 of the Consultation Document and Regulation 8(2) seems to suggest that labour providers that are also employment businesses within the meaning of the Employment Agencies Act 1973 must comply also with the provisions of that Act. As in practice all labour providers are employment businesses within the meaning of the Act this means that they will have to comply with two lots of regulations made by two different government departments in respect of the same business. Paragraph 18 of the Consultation Document says that this “ensures that a single regulatory regime applies to gangmasters”. It actually ensures that a double regime applies. The effect of Draft Regulation 8(2) is to remove the effect of Section 27 of the Act which quite specifically exempted those subject to the new legislation from the Employment Agencies Act. It may well be that this was not the intention. It is however proper that some of the safeguards in the regulations under the Employment Agencies Act should be incorporated into the licence conditions so as to ensure, for example, that the rules governing recruitment are the same across all sectors.

Regulation 9 - Tenure and Remuneration of the Board

42. This seems to go back to the old-fashioned notion of “jobs for life”. It will allow the chairman and deputy chairman to serve initially for five years and then for another five years while representative members can hold office for life. These are out of tune with modern practice.

43. In answer to the specific questions:

Q8 The chairman and deputy chairman should be appointed for three year terms renewable once. Other members should be appointed for a maximum of five years.

Q9 The terms of appointment and reappointment are satisfactory.

Q10 If the board comprises representative members then they should receive no remuneration as the costs are likely to be excessive and the wrong sort of people might well be attracted to serve. It is noted that it is envisaged that the chairman will be paid £15,000 a year and there appears to be no provision in the budget for the payment of the deputy chairman. £15,000 a year is probably the lowest figure paid to any chairman of a regulatory body. Combined with having to chair a huge board largely comprising representatives of specific interests over which the chairman will have no say as to the membership means that it will be difficult to get a good field of candidates. One will be looking for somebody prepared to work for way below a market rate and relish the challenge of managing an unmanageable board knowing that if anything goes wrong he or she will get the blame. This is not a risk that should be taken on this important matter. However, experience in other sectors suggests that some suitable people will want to take on the position as almost a “pro bono” part of their portfolio.

Regulation 10 - Committees

44. Regulation 10(1) allows committees to be established only for the purpose of giving advice. This makes the whole of Regulation 3 on liaison groups unnecessary. In practice the Board will wish to appoint committees which will have specific delegated responsibility. It will almost certainly wish to appoint an audit committee and it may wish to appoint a human relations committee and perhaps other committees as well. As drafted, Regulation 10(1) would not allow it to appoint such committees with the usual delegated responsibility as committees could only give advice. Accordingly in Regulation 10(1) the words “to give it advice about matters relating to the carrying on of the functions of the Authority” should be removed”.

45. Dealing with the specific questions:

Q11 It should be for the board to decide if it needs committees.

Q12 The board should be free to decide the membership of committees.

Q13 There should be no provision for payment of committee members who are not members of the board.

Regulation 11 Proceedings of the board and its committees

46. These provisions are fairly standard and satisfactory with the sole exception of fixing the quorum as 13 members.

Q14 The Board should be allowed to regulate its own proceedings.

Q15 With the Draft Regulations it is possible that the board will have 15 members. In these circumstances a quorum of 13 is unreasonably high. It would be better to state that the board should be free to set its own quorum subject to it being at least 50% of the members of the board.

Q16 The proposed voting arrangements are satisfactory.

47. There should be the normal provision to allow the Board to delegate any of its responsibilities. Paragraph 9 of Schedule 1 to the Security Industry Act gives a suitable form of wording.

Regulation 13 - Staff of the Executive

48. This illustrates the confusion by introducing the concept of an Executive. As worded, the Chief Executive will be employed by the Authority but will be a member of the Executive while, for example, the Board's secretary will be employed by the Executive. The whole Regulation should be redrafted. Again, the SIA is a good comparator. The legislation on it provides:

“The Authority shall have –

(a) a chief executive, with responsibility to the Authority for the carrying out of its functions and the management of its employees; and

(b) subject to the approval of the Secretary of State as to numbers and terms and conditions of service, such other employees as the Authority may appoint.”

Appendix 1

Structure of other regulatory bodies

This appendix gives details of the composition of regulatory boards which have been established over the past few years, concentrating as far as possible on those which have most in common with the Gangmasters Licensing Authority.

The Security Industry Authority

The Security Industry Authority is probably the regulator most analogous to the Gangmasters Licensing Authority, and indeed it has been quoted a number of times in the discussions on setting up the Authority. The SIA was established under the Private Security Industry Act 2001 to regulate the whole of the private security industry, an area that was not previously regulated and where there are a great many stakeholders. The Act provides for the Authority to consist of “such number of members as the Secretary of State may determine”. The Authority is given a blanket power to establish committees which in turn may establish sub-committees.

The SIA currently has a Board of four members each of whom is independent of the industry. The Board has established a Stakeholder Advisory Committee comprising 16 members from all relevant stakeholder groups including the industry itself, customers of the industry, a trade union official and the Director General of the City and Guilds of London Institute.

The Financial Services Authority

The Financial Services Authority was established to regulate the financial services industry under the Financial Services and Markets Act 2000. The board is appointed by the Treasury and currently comprises a full time chairman, a full time chief executive, three managing directors and 11 non-executive directors. The non-executives are all appointed under the Nolan principles and vacancies are publicly advertised.

There is statutory provision for a consumer panel and for a practitioner panel. The consumer panel concentrates on matters relevant to individuals while the practitioner panel concentrates on matters relevant to the businesses being regulated.

The Food Standards Agency

The Food Standards Agency is an independent food safety watchdog established by an Act of Parliament in 2000. The Agency's website states that "board members are appointed to act collectively in the public interest, not represent specific sectors". The board currently has 12 members.

The Environment Agency

The Environment Agency, like the GLA, is a Defra sponsored NDBP. It is responsible for protecting and improving the environment in England and Wales. The board comprises 15 members including the chairman and the chief executive. All are appointed by the Secretary of State for Environment, Food and Rural Affairs, except one member appointed by the National Assembly of Wales.

Countryside Agency

The Countryside Agency, like the Environment Agency, is a DEFRA NDPB. It has a board of 12 members.

The Meat and Livestock Commission

The Meat and Livestock Commission promotes the meat and livestock industry. It is governed by 11 commissioners.

The Seafish Industry Authority

The Seafish Industry Authority works to promote good quality, sustainable seafood. The board has 12 members, eight drawn from the main sectors of the seafood industry and four independent members, including the chairman and deputy chairman. Executive directors also sit on the board. It is not a regulatory body.

Pesticides Safety Directorate

The Pesticides Safety Directorate is an executive agency of Defra responsible for ensuring the safe use of pesticides. The Agency, together with Defra's other regulatory agency, the Veterinary Medicines Directorate, is governed by a Regulatory Agencies Strategy Board of 14 people most of whom represent Defra and other government agencies but two of whom are external. The chief executives of each of the two bodies are members of the board.

Covent GardenMarket Authority

Covent Garden Market Authority was established by Parliament in 1961 to own and operate New Covent Garden Market. The board comprises a chairman and six other members.

The Wine Standards Board

The Wine Standards Board is responsible for the enforcement and execution in the UK of European Union regulations in the wine sector. It is governed by a non-executive board of six directors, one appointed by each of the sponsors, Defra and the Vintners' Company, and the other four appointed by the Secretary of State, that is an independent chairman, two members from the wine trade and one member with a background in consumer affairs.

Ofgem

Ofgem is responsible for regulating the gas and electricity markets. The principal governing body is the Gas and Electricity Markets Authority, comprising a chairman, nine independent non-executives and five executives.

Ofcom

Ofcom is the most recent of the very large regulators in the UK and has responsibility for the whole of the UK communications industry. The board of Ofcom comprises a chairman, a chief executive and eight other board members, two of whom are executives. Ofcom has established a consumer panel to advise it on the consumer interest in the market it regulates and also advisory committees for the nations and on older and disabled people.

Ofwat

Ofwat is the economic regulator for the water and sewerage industry in England and Wales. The board comprises a full time director general, four executive directors and four advisory non-executive directors.

A note on Defra policy on NDPBs

Defra's website indicates that it is responsible for the appointment to boards of its NDPBs and public corporations, and that it makes all appointments following the Nolan principles and according to the guidelines laid down in the Office of the Commissioner for Public Appointments code of practice. However, what is being proposed does not comply with the code of practice. Under the OCPA principles "all public appointments should be governed by the overriding principle of selection based on merit, by the well informed choice of individuals who through their abilities, experience and qualities match the need of the public body in question" and "no appointment will take place without first being scrutinised by an independent panel or by a group including membership independent of the Department filling the post".

There is provision for nominating bodies but in this case Departments must request at least two nominees for each statutory vacancy on the body and encourage nominating bodies to comply with this request so as to uphold the principle of ministerial choice. Departments may accept one nomination only after consultation with OCPA who will monitor the exceptions.

What is envisaged in the Draft Regulations clearly does not comply with the OCPA requirements in that there is no provision for nominating bodies to nominate two representatives with the Secretary of State then having a choice.