

2006 No. 340

EMPLOYMENT

The Gangmasters Licensing (Exclusions) Regulations (Northern Ireland) 2006

Made - - - - - *17th August 2006*

Coming into operation - *11th September 2006*

The Department of Agriculture and Rural Development^(a), in exercise of the powers conferred on it by section 6(2) of the Gangmasters (Licensing) Act 2004^(b), hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Gangmasters Licensing (Exclusions) Regulations (Northern Ireland) 2006 and shall come into operation on 11th September 2006.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Gangmasters (Licensing) Act 2004;

“the Authority” means the Gangmasters Licensing Authority;

“the Department” means the Department of Agriculture and Rural Development;

“the Education Orders” have the same meaning as in Article 2 of the Education and Libraries (Northern Ireland) Order 1986^(c)

“licence” means a licence granted by the Authority under section 7(1) of the Act authorising a person to act as a gangmaster.

(2) The Interpretation Act (Northern Ireland) 1954^(d) shall apply to these Regulations as it applies to an Act of the Assembly.

Circumstances in which a licence is not required

3. A person does not require a licence to act as a gangmaster under section 6(1) of the Act in the circumstances specified in paragraphs 2 to 15 of the Schedule.

(a) Formerly the Department of Agriculture for Northern Ireland, *see* Article 3(4) of S.I. 1999/283 (N.I. 1)
(b) 2004 c.11: *see* modifications to section 6(2) by paragraphs 8, 19(1) and 19(2) of Schedule 2
(c) S.I. 1986 No. 594 (N.I. 3); Article 2 was amended by S.I. 1998/1759 (N.I. 13)
(d) 1954 c.33 (N.I.)

Sealed with the Official Seal of the Department of Agriculture and Rural Development on 17th August 2006.



R Jordan

A senior officer of the Department of Agriculture and Rural Development

SCHEDULE

Regulation 3

CIRCUMSTANCES IN WHICH A LICENCE IS NOT REQUIRED UNDER THE 2004 ACT

1. In this Schedule—

“catering establishment” means—

- (a) a restaurant, canteen, club, public house, school kitchen, prison kitchen, hospital kitchen or similar establishment (including a vehicle or a fixed or mobile stall) where—
 - (i) food is cooked or made ready for consumption without further preparation; and
 - (ii) food is prepared for service to the consumer.
- (b) other premises used solely for the purpose of cooking or making food ready for consumption, without further preparation, after delivery to the consumer;

“distribution warehouse” means premises where produce is received prior to onward distribution to a wholesale or retail establishment and—

- (a) there is no change in the ownership of the produce concerned between receipt and onward distribution; and
- (b) the wholesale or retail establishment to which delivery is made is excluded under paragraph 2 of this Schedule; and
- (c) the premises are owned by the same company that owns the retail or wholesale establishment to which the produce is delivered;

“farmer” means a person—

- (a) who occupies land used for agricultural activities; or
- (b) who owns or operates a business that pursues agricultural activities in whole or in part; or
- (c) is an employed person with management responsibility for all or part of a business that pursues agricultural activities;

“produce” means produce derived from agricultural work, shellfish, fish or products derived from shellfish or fish;

“Seasonal Agricultural Workers Scheme” means a scheme operated by Work Permits UK, part of the Home Office, which allows farmers and growers in the United Kingdom to recruit overseas workers to undertake work that is both seasonal and agricultural;

“share farming agreement” means an agreement entered into between two or more persons to share the gross receipts of—

- (a) their separate business assets; or
- (b) services for carrying out specified farming operations, as divided between them and paid to the businesses in agreed proportions;

“wholesale establishment” means a facility operated solely for the purpose of selling produce for the purposes of resale or to a catering establishment, and includes a cash and carry warehouse.

2. The supply or use of a worker to process or pack produce if the worker is supplied to—

- (a) a catering establishment;
- (b) a shop or other retail establishment;
- (c) a wholesale market;
- (d) a wholesale establishment;

- (e) a distribution warehouse.
3. The supply of a worker to process or pack a product which includes a derivative of produce but where the product being packed is not a food product, pet food product or a product which is primarily an agricultural, fish or shellfish product.
4. The supply of a worker for agricultural work by a farmer (A) to another farmer (B) where—
- (a) the supply is to do work on a farm which is the subject of a share farming agreement between A and B; or
 - (b) the total hours the worker works for B are not more than twenty per cent of the total hours he worked for A in the three months immediately preceding the commencement of the period of work undertaken for B; or
 - (c) the worker has been supplied to A by a person (C) who acts as a gangmaster in making that supply, and the supply by A—
 - (i) is made with C's agreement to the nature of the work to be undertaken for B; and
 - (ii) is a one-off arrangement of less than two weeks.
5. The use of a worker for agricultural work by a farmer (A) in connection with services provided by him to another farmer (B) where—
- (a) the services provided involve a one-off arrangement of less than two weeks; and
 - (b) the total hours the worker works delivering services to B are not more than twenty per cent of the total hours he worked for A in the three months immediately preceding the commencement of the delivery of services to B; or
 - (c) the worker has been supplied to A by a person (C) who acts as a gangmaster in making that supply, and the use of the worker to deliver services by A is made with C's agreement to the nature of the services to be provided to B.
6. The supply of a worker by a farmer to a contractor to operate machinery supplied by that contractor for the purpose of undertaking agricultural work for that farmer.
7. The supply of a worker by a sole operator in the Seasonal Agricultural Workers Scheme to another Seasonal Agricultural Workers Scheme operator.
8. The use of a worker for agricultural work by a service provider to provide a service to a farmer—
- (a) where the service involves the use of machinery owned or hired by the service provider; and
 - (b) the worker is employed by the service provider to operate or to support the operation of that machinery.
- 9.—(1) The use of a worker by a service provider, in connection with a food and drink processing and packaging service provided to a service user, where the service provider—
- (a) is the worker's employer;
 - (b) owns, hires or leases any equipment, tools or machinery used by the worker which are necessary to carry out the service; and
 - (c) owns or leases the premises where the work is carried out.
10. The use of a worker to harvest crops by a person who has transferred title to the land on which the crops are grown, but has retained title to the crops.
11. The supply of a person licensed under the Welfare of Animals (Slaughter or Killing) Regulations (Northern Ireland) 1996(a).

(a) S.R. 1996 No. 558 as amended by S.R. 2002 No. 304 and S.R. 2004 No. 209

12. The supply of a worker by an educational establishment to undertake agricultural work solely in furtherance of education or training provided to the worker by that establishment leading to an agricultural qualification accredited by—

- (a) the Northern Ireland Council for the Curriculum, Examinations and Assessments under Article 75(1) of the Education (Northern Ireland) Order 1998(a) or in accordance with any designation by the Department for Education and Learning under the Education Orders; or
- (b) the Qualifications and Curriculum Authority under section 24(4) of the Education Act 1997 ((b); or
- (c) the Scottish Qualifications Authority under part 1 clause 3 of the Education (Scotland) Act 1996 ((c).

13. The supply by a person (A) to a farmer of a single worker to undertake agricultural work in which that worker is specialised where—

- (a) the farmer requires the worker to hold a specific qualification at or above National Vocational Qualification Level 2 (as recognised under section 24(4) of the Education Act 1997, or Scottish National Vocational Level 2 (as recognised under part 1 clause 3 of the Education (Scotland) Act 1996, or an equivalent qualification, which is relevant and necessary to ensure the worker can effectively discharge the responsibilities he will be required to undertake; and
- (b) the farmer employs the worker following his supply by A; and
- (c) on the day the supply is made, no other worker is supplied to the farmer by A.

14. The supply or use of a worker to gather shellfish before 1 October 2006.

15.—(1) On and after 1 October 2006 the use of a worker—

- (a) to dive with the aid of breathing apparatus to gather shellfish from the sea bed; or
- (b) to operate a net, dredge or other machinery used to gather shellfish from the sea bed, other than a hand net or hand-held rake, where the worker is using the net, dredge or other machinery on board a fishing vessel which is operating at sea.

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations make provision for the circumstances in which a licence to act as a gangmaster, granted under section 7 of the Gangmasters (Licensing) Act 2004 (c.11), is not required.

The circumstances in which a licence is not required are set out in the Schedule.

A Regulatory Impact Assessment has been prepared. Copies can be obtained from Farm Policy Branch, Department of Agriculture and Rural Development, Dundonald House, Upper Newtownards Road, Belfast BT4 3SB.

(a) S.I. 1998 No. 1759 (N.I. 13) as amended by S.R. 1999/481 Sch. 3 Pt. II
(b) 1997 c.44
(c) 1996 c.43

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