

2014 No. 23

EMPLOYMENT

The Gangmasters Licensing (Exclusions) Regulations (Northern Ireland) 2014

Made - - - - *5th February 2014*

Coming into operation - *7th March 2014*

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

Citation and Commencement

1. These Regulations may be cited as the Gangmasters Licensing (Exclusions) Regulations (Northern Ireland) 2014 and shall come into operation on 7 March 2014.

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 the Schedule.

4. The Gangmasters Licensing (Exclusions) Regulations (Northern Ireland) 2010 are revoked.

(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 5th
February 2014



Colette McMaster
A senior officer of the
Department of Agriculture and Rural Development

SCHEDULE

Regulation 3

CIRCUMSTANCES IN WHICH A LICENCE IS NOT REQUIRED

PART 1

Produce workers

1. The supply 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.

2. The supply of a worker to process or pack a product which includes a derivative of produce but where the product concerned is not a food product, pet food or a product which is primarily an agricultural, fish or shellfish product.

3. In this Part—

“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 where—
 - (i) Food is cooked or made ready for consumption without further preparation;
 - (ii) Food is prepared for service to the consumer; and
 - (iii) There is no change of ownership of the food concerned between preparation and delivery to the consumer;

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

- (c) There is no change in the ownership of the produce concerned between receipt and onward distribution;
- (d) The wholesale or retail establishment to which delivery is made is excluded under paragraph 1 of this Schedule; and
- (e) The premises are owned by the same person that owns the retail or wholesale establishment to which the produce is delivered;

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

“wholesale establishment” means 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 but excludes a food processing or packaging facility; and

“to process or pack” includes to carry out the daily cleaning and maintenance of machinery used for the processing or packing.

PART 2

Agricultural Workers

4.—(1) 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 thirty per cent of the total hours the worker worked for A in the twelve 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.

(2) In this paragraph—

“share-farming agreement” means an agreement entered into between two or more persons to share the net 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.

5. The use of a worker for agricultural work by a farmer (A) to provide a service to another farmer (B) where the service provided involves a one-off arrangement of less than four weeks and—

- (a) The total hours the worker works delivering services to B are not more than thirty per cent of the total hours the worker worked for A in the twelve months immediately preceding the commencement of the delivery of services to B; or
- (b) 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 person (A) to operate machinery supplied by A for the purpose of undertaking agricultural work for that farmer.

7.—(1) The supply of a worker by a sole operator in the Seasonal Agricultural Workers Scheme to another Seasonal Agricultural Workers Scheme operator.

(2) In this paragraph “Seasonal Agricultural Workers Scheme” means a scheme operated by the Home Office, which allows farmers and growers in the United Kingdom to recruit workers to undertake work that is both seasonal and agricultural.

8. The use of a worker for agricultural work by a person (A) to provide a service to a farmer where—

- (a) The service involves the use of machinery owned or hired by A; and
- (b) The worker is employed by A to operate or to support the operation of that machinery.

9. The use of a worker for agricultural work by a person (A) to provide a service to a farmer where—

- (a) A enters into an arrangement with another person (B) to deliver the service;
- (b) The service involves the use of machinery owned or hired by B; and
- (c) The worker is employed by B to operate or to support the operation of that machinery.

10. The use of a worker by a person (A) to provide a food and drink processing and packaging service where A—

- (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.

11. 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.

12. The supply of a worker for the purpose of killing an animal who has—

- (a) A licence under the Welfare of Animals (Slaughter or Killing) Regulations (Northern Ireland) 1996(a) to slaughter or kill animals or carry out related operations; or
- (b) A licence under the Welfare of Animals (Slaughter or Killing) Regulations 1995(b) to slaughter animals; or
- (c) A certificate of competence to kill animals under the Welfare of Animals at the Time of Killing (Scotland) Regulations 2012(c).

13. 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 which—

- (a) In relation to Northern Ireland, is accredited by the Northern Ireland Council for the Curriculum, Examinations and Assessments under Article 75(1) of the Education (Northern Ireland) Order 1998(d) or in accordance with any designation by the Department for Employment and Learning under the Education;
- (b) In relation to England, is a qualification to which Part 7 of the Apprenticeships, Skills, Children and Learning Act 2009(e) applies;
- (c) In relation to Wales, is relevant qualification within section 30 of the Education Act 1997(f);
- (d) In relation to Scotland, is an qualification within the meaning of section 21 of the Education (Scotland) Act 1995(g) or an accredited qualification under section 3 of the Act.

14. The supply of an apprentice by an Apprentice Training Agency—

- (a) Recognised by the Skills Funding Agency or the Welsh Government; or
- (b) Registered with the National Apprenticeship Service or the Welsh Government as an Apprentice Training Agency in development.

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

- (a) The worker holds a specific qualification at or above National Vocational Qualification Level 2 or Scottish National Vocational Qualification Level 2, or an equivalent qualification, which is relevant and necessary to ensure the worker can effectively discharge the responsibilities that the worker will be required to undertake.
- (b) The farmer employs the worker following the worker's supply by A; and
- (c) No more than four such workers are supplied to the farmer by A at any one time.

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

(b) S.I. 1995/731

(c) S.S.I. 2012/321

(d) S.I. 1998 No. 1759 (N.I. 13) as amended by S.R. 1999/481 Sch.3 Pt. II

(e) 2009 c.22

(f) 1997 c. 44 Section 30 was substituted by S.I. 2005/3239, article 9(1) and Schedule 1 paragraphs 6 and 14 and amended by the Education and Skills Act 2008 (c.25) section 162

(g) 1996 c.43

16.—(1) The use of a worker for agricultural work by a person (A) to provide a service to a farmer where the worker is a member of A’s family.

(2) In this paragraph the member of A’s family are—

- (a) A’s spouse or civil partner;
- (b) Any other person (whether of a different sex or the same sex) with whom A lives as partner in an enduring family relationship;
- (c) Any child, step-child, parent, grandchildren, grandparent, brother or sister of A; and
- (d) Any child or step-child of a person within paragraph (b) (and who is not a child or stepchild of A) who lives with A and has not attained the age of 18.

17. The use of a worker by a land agent where—

- (a) The land agent is a member of the Royal Institute of Chartered Surveyors;
- (b) The land agent is contracted to manage land on which the workers will be employed; and
- (c) The use of that worker is incidental to the fulfilment of the land agent’s contract to manage that land.

18. The use of a worker by a farmer to plant, raise, care for or harvest crops or animals which are—

- (a) The property of a third party;
- (b) Managed by the farmer under the terms of a written agreement; and
- (c) Grown or kept on land owned or occupied by the farmer.

19. The supply of volunteers to undertake conservation work.

20. The use of a worker by A for forestry work where A uses the worker to do work in connection with services provided by A to another person.

21. The use of a worker by a member of the Royal College of Veterinarians, or an incorporated veterinary practice, to carry out work incidental to the supply of veterinary services.

22. The use of a worker by a supplier of vaccines to perform vaccinations.

23. The supply or use of a worker to determine the sex of chickens and other poultry.

24. The supply of a worker by a person authorised to carry out functions of, or under contract to provide services to, the Secretary of State for Work and Pensions in connection with employment related support designed to assist the worker to obtain or remain in work or be able to do so.

25. In this Part “farmer” means a person who—

- (a) Occupies land which one person uses for agriculture; or
- (b) Is employed by a person with title to land to manage the use of that land for agriculture.

PART 3

Shellfish gatherers

26.—(1) 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.

(2) The use by shellfish cultivators with an exclusive right to cultivate shellfish on an area of the seabed of a worker to gather—

- (a) Shellfish from the shore for cultivation; or

- (b) Shellfish cultivated on the areas to which they have exclusive access.
- (3) The use of a worker by the owner or operator of a shellfish hatchery to gather shellfish.

PART 4

Bodies corporate

27. The supply of a worker by a body corporate (A) to another body corporate (B) or the use of a worker by A to provide a service to B where—

- (a) The worker is employed by A under a contract of service, and—
- (b) either—
 - (i) A and B are wholly-owned subsidiaries of the same body corporate;
 - (ii) A is a wholly-owned subsidiary of B; or
 - (iii) B is a wholly-owned subsidiary of A.

Scottish partnerships

28. The use of a worker by a Scottish partnership where the worker is a partner in that partnership.

EXPLANATORY NOTE

(This note is not part of the Order)

These Regulations revoke and remake the Gangmasters Licensing (Exclusions) Regulations (Northern Ireland) 2010. They 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 partial 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.

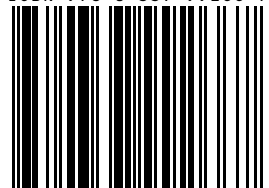
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