

2010 No. 162

EMPLOYMENT

The Gangmasters Licensing (Exclusions) Regulations (Northern Ireland) 2010

Made - - - - - *21st April 2010*

Coming into operation- - - - - *14th May 2010*

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) 2010 and shall come into operation on 14th May 2010.

Interpretation

2.—(1) In these Regulations—

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

“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 in the circumstances specified in—

- (a) paragraphs 2 or 3 of Part 1;
- (b) any of paragraphs 2 to 13 of Part 2; or
- (c) Part 3 or 4,

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.)

Revocation

4. The Gangmasters Licensing (Exclusions) Regulations (Northern Ireland) 2006(a) are revoked.

Sealed with the Official Seal of the Department of Agriculture and Rural Development on 21st April 2010.



John Speers

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

PART 1

Produce workers

1. 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—

- (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; and
- (c) 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;

(a) S.R. 2006 No. 340

“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 but excludes a food processing or packing facility.

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 concerned is not a food product, pet food product or a product which is primarily an agricultural, fish or shellfish product.

PART 2

Agricultural workers

1. In this Part—

“farmer” means a person—

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

“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 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.

2. 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.

3. 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.
4. 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.
5. The supply of a worker by a sole operator in the Seasonal Agricultural Workers Scheme to another Seasonal Agricultural Workers Scheme operator.
6. 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.
7. 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.
8. 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.
9. 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.
10. The supply of a worker licensed under the Welfare of Animals (Slaughter or Killing) Regulations (Northern Ireland) 1996(a) to slaughter animals.
11. 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(b) or in accordance with any designation by the Department for Employment and Learning under the Education Orders; or
 - (b) the Qualifications and Curriculum Authority under section 24(4) of the Education Act 1997(c); or
 - (c) the Scottish Qualifications Authority under part 1 clause 3 of the Education (Scotland) Act 1996(d).
12. The supply by 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 (as accredited under section 24(4) of the Education Act 1997), or Scottish National Vocational Level 2 (as accredited under part 1 clause 3 of the Education

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

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

(c) 1997 c.44

(d) 1996 c.43

(Scotland) Act 1996), or an equivalent qualification which is relevant and necessary to ensure that 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) no more than four such workers are supplied to the farmer by A at any one time.

13.—(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 members 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, grandchild, grandparent, brother or sister of A;
- (d) any child or step-child of a person within head (b) (and who is not a child or step-child of A) who lives with A and has not attained the age of 18.

PART 3

Shellfish gatherers

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.

PART 4

Bodies corporate

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) A and B are wholly owned subsidiaries of the same body corporate; or
- (b) A is a wholly owned subsidiary of B; or
- (c) B is a wholly owned subsidiary of A; and
- (d) the worker is employed by A under a contract of service.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations revoke and remake the Gangmasters Licensing (Exclusions) Regulations (Northern Ireland) 2006. 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 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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