

Gangmaster (Licensing) Bill

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To make provision for the licensing of gangmasters; to make further provision concerning the enforcement of legislation relating to gangmasters; and for connected purposes.

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supported by
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EXPLANATORY NOTES

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Make provision for the licensing of gangmasters; to make further provision concerning the enforcement of legislation relating to gangmasters; and for connected purposes.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Interpretation

(1) In this Act—

“agricultural work” includes dairy-farming, the production of any consumable produce which is grown for sale or for consumption or other use for the purposes of a trade or business or of any other undertaking (whether carried on for profit or not), and the use of land as grazing, meadow or pasture land or orchard or osier land or woodland or for market gardens or nursery grounds;

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“the Authority” shall be construed in accordance with section 3(1) of this Act;

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“consumable produce” means—

- (a) livestock (including fish and shellfish) reared, farmed or harvested for consumption; or alternatively
- (b) produce grown for consumption or for other use after separation (whether by cutting, picking, harvesting, gathering, reaping or otherwise) from the land, soil or plant on which, or in which, it is grown.

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“gang worker” shall be construed in accordance with section 2(3) of this Act;

“gangmaster” means a person who engages in licensable conduct and is obliged to obtain a licence under section 2 of this Act;

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“licence” is a licence to undertake activities pursuant to section 2(3);

“licensable conduct” shall be construed in accordance with section 2(2) of this Act;

“personal documents” mean all identity documents and those documents permitting an individual to work in the UK, including, without

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prejudice to the generality of the foregoing, birth certificates, passports, national identity cards, visas, Government certificates of entitlement, work permits, and residence documents;

“principal” shall be construed in accordance with section 2(3) of this Act, except that it shall have its ordinary meaning when used in section 2(6) of this Act;

“worker” means an individual who has entered into or works under (or where the employment has ceased, worked under)—

- (a) a contract of employment; or
- (b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual.

2 Requirement to hold a licence

- (1) It is an offence for a person to engage in licensable conduct otherwise than under and in accordance with the conditions of a licence.
- (2) For the purposes of this Act, a person engages in licensable conduct if—
 - (a) he;
 - (b) a body corporate of which he is a director;
 - (c) a firm of which he is a partner; or
 - (d) an unincorporated association of which he is a member of the management committee
 engages (whether directly, or through his workers or agents) in activities falling within subsection (3).
- (3) The following activities fall within this subsection—
 - (a) the supply of an individual (“the gang worker”) to do work for another (“the principal”) under a contract or other arrangements made between the principal and the supplier of the gang worker;
 - (b) the supply and supervision of a gang worker to do work required to be done under a contract made between the supplier and supervisor of the gang worker and the principal
 provided that, in both cases, the work undertaken (or to be undertaken) by the gang worker falls within subsection (4).
- (4) Work falls within this subsection if it involves—
 - (a) agricultural work, as defined in section 1; or
 - (b) packaging or processing consumable produce.
- (5) A person guilty of an offence under this section shall be liable on summary conviction to—
 - (a) imprisonment for a term not exceeding six months;
 - (b) a fine not exceeding level 5 on the standard scale;
 - (c) the revocation of his licence; or
 - (d) any combination of the above.
- (6) Nothing in this section shall require a body corporate, unincorporated association or partnership to hold more than one licence in respect of its

licensable conduct nor to require a worker or agent to obtain a licence in respect of conduct amounting to work done for his employer or principal.

3 Administration and enforcement

- (1) The Secretary of State shall by regulations nominate or establish a body or bodies (“the Authority”) to undertake licensing and enforcement functions under this section. 5
- (2) The Schedule shall have effect.
- (3) The Secretary of State shall make regulations for the purpose of instituting a scheme of licensing gangmasters to be administered by the Authority subject to the requirements of the Schedule. 10
- (4) The Secretary of State shall make regulations for the purpose of instituting a scheme of enforcement by the Authority of the obligations contained in this Act.
- (5) The Authority nominated or established pursuant to regulations under subsection (1) shall administer the scheme of licensing and shall undertake the functions of enforcement as prescribed by and subject to the regulations made under this section. 15
- (6) The Authority shall inspect records kept by gangmasters pursuant to section 5(1) of this Act subject to any regulations which the Secretary of State may prescribe. 20
- (7) Any information obtained by the Authority acting under this section shall not be supplied to any other person or body unless it is supplied for the purposes of any civil or criminal proceedings relating to this Act.
- (8) The Secretary of State shall each year lay a report before each House of Parliament on the licensing and enforcement activities of the Authority. 25
- (9) Any power to make regulations under this Act shall be exercisable by Statutory Instrument.
- (10) Any regulations made by the Secretary of State under this Act are to be subject to annulment in pursuance of a resolution of either House of Parliament.

4 Obligations of principals 30

- (1) It is an offence for a principal to engage the services of a gangmaster involving the performance of licensable conduct unless the gangmaster is the holder of a valid licence.
- (2) In proceedings against a person for an offence under this section, it shall be a defence for him to show either— 35
 - (a) that he did not know, and had no reasonable grounds for suspecting, at the time when the activities were carried out, that the gangmaster in question was not the holder of a licence in respect of those activities; or
 - (b) that he took all reasonable steps, in relation to the services in question, for securing that the gangmaster would not engage in any licensable conduct in respect of which he was not the holder of a licence. 40

- (3) A person guilty of an offence under this section shall be liable, on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale, or to both.

5 Expenses

There shall be paid out of money provided by Parliament any expenditure incurred by the Secretary of State under or by virtue of this Act. 5

6 Short title, commencement and extent

- (1) This Act may be cited as the Gangmaster (Licensing) Act 2004.
- (2) The provisions of this Act, shall come into force on such day as the Secretary of State may by order made by Statutory Instrument appoint; and different days may be appointed under this subsection for different purposes. 10
- (3) This Act extends to England, Northern Ireland, Scotland and Wales.

SCHEDULE

Section 3

REQUIREMENTS OF THE LICENSING SCHEME

Matters to be covered by the regulations

- 1 The Regulations made by the Secretary of State under section 3(2) of this Act must, subject to the provisions of this Schedule, make provision for— 5
- (a) the establishment of the Authority, its powers and functions;
 - (b) the criteria to be applied by the Authority when considering whether or not to grant, attach conditions to, revoke or modify a licence;
 - (c) the required form and contents of an application to the Authority for the grant of a licence; 10
 - (d) the payment of a fee to accompany the application for the grant of a licence;
 - (e) the powers of the Authority to—
 - (i) grant or not to grant;
 - (ii) attach conditions to; 15
 - (iii) revoke; and
 - (iv) modifya licence to permit a person to carry out licensable conduct;
 - (f) the form of licences;
 - (g) the date upon which licences will normally expire; 20
 - (h) appeals from decisions of the Authority; and
 - (i) the creation and maintenance by the Authority of a register of all holders of a current licence, to be open to inspection by any member of the public subject to the payment of a prescribed fee.

Compulsory criterion 25

- 2 In respect of paragraph 1(a), the Regulations made by the Secretary of State under section 3(2) of this Act must provide that the Authority will not normally grant or renew a licence, and will normally revoke a valid licence, where the applicant or licence holder, as the case may be, has been convicted of an offence under this Act within a period of 2 years starting on the date of conviction. 30

Mandatory licence conditions

- 3 The Regulations made by the Secretary of State under section 3(2) of this Act must provide that, in addition to any conditions attached to a licence by the Authority under paragraph 1(e)(ii), the following mandatory conditions shall be conditions of every licence— 35
- (a) the gangmaster may only engage in licensable conduct (subject to any other conditions of the licence) between the dates of validity of the licence;

- (b) the gangmaster shall cooperate with the Authority acting to undertake its licensing or enforcement functions
- (c) the gangmaster shall provide to all those of his workers or agents through whom he engages in the activities set out in section 2(3) of this Act personal identity consisting of— 5
 - (i) the name of the worker or agent;
 - (ii) a photograph of the worker or agent;
 - (iii) the name of the gangmaster;
 - (iv) the licence number of the gangmaster's licence; and
 - (v) any other details that the Secretary of State may prescribe; 10
- (d) the gangmaster shall not withhold personal documents from a gang worker or prospective gang worker;
- (e) the gangmaster or his agent or worker shall produce for inspection on demand by a principal a valid licence or valid personal identity complying with subparagraph (b); and 15
- (f) the gangmaster shall, for a period of 5 years beginning with the date of any licensable conduct, keep records relating to such licensable conduct, including—
 - (i) the name of each principal with whom the gangmaster contracts or makes other arrangements; 20
 - (ii) the name of each gang worker supplied;
 - (iii) details of how (and if applicable from or through whom) each gang worker was recruited by the gangmaster;
 - (iv) details of the work each gang worker has undertaken; and
 - (v) details of the payments made to gang workers, including the gross amount of the payments; the amounts of any variable and fixed deductions from that gross amount and the purposes for which they are made; the net amount of the payments; and, where different parts of the net amount are paid in different ways, the amount and method of payment of each part-payment. 25

Contents of the register

- 4 In respect of paragraph 1(i), the Regulations made by the Secretary of State under section 3(2) of this Act must require that only the following particulars are recorded in every entry in the register— 35
 - (a) the name of the licence holder;
 - (b) an address for the licence holder which satisfies the prescribed requirements;
 - (c) the type of work performed by gang workers supplied by the licence holder; 40
 - (d) the time of expiry of the licence, if not renewed; and
 - (e) any conditions that may be attached to the licence, other than those mandatory conditions set out in paragraph 3.