

*These notes refer to the Gangmaster (Licensing) Bill
as introduced in the House of Commons on 7 January 2004 [Bill 17]*

GANGMASTER (LICENSING) BILL

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Gangmaster (Licensing) Bill as introduced in the House of Commons on 7 January 2004. They have been prepared on behalf of Jim Sheridan MP to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.

2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

SUMMARY

3. This Bill extends to the whole of the United Kingdom.

4. The main effects of the Bill are -

- a. to define a "gangmaster" with reference to "licensable conduct";
- b. to require gangmasters to obtain a licence and be entered onto a public register;
- c. to make it a criminal offence for a gangmaster to engage in licensable conduct without a licence or to breach the conditions of the licence, and, for this purpose to make it compulsory conditions of each licence that:
 - i. a gangmaster will not withhold personal documents from gang workers;
 - ii. a gangmaster will provide personal identity to their agents/workers;
 - iii. a gangmaster (or their worker or agent) will to show their licence or identity to users of gangmasters on demand;
 - iv. a gangmaster will keep records relating to his activities as a gangmaster for a period of 5 years from the date of that conduct;
- d. to make it a criminal offence for users of gangmasters to engage an unlicensed gangmaster (subject to a defence);
- e. to require the Secretary of State to set up a scheme of licensing and enforcement

COMMENTARY ON CLAUSES

5. The general purpose of this Bill is to make the operation of gangmasters more transparent, thereby ensuring that they comply with the legal obligations they owe to their employees or workers. The Bill is therefore designed to promote the rights of gang workers and eliminate forced labour in the relevant sectors.

Clause 1: Interpretation

6. The definition of "agricultural work" is taken from the definition of "agriculture" in section 17 of the Agricultural Wages Act 1948.
7. The definitions of "gangmaster", "gang worker", "principal" and "licensable conduct" are defined with reference to their use in the description of licensable conduct in clause 2 of the Bill.
8. "Worker" has the same meaning as within the Working Time Regulations 1998.

Clause 2: Requirement to hold a Licence

9. Clause 2(1) sets out the requirement to have a licence and makes it a criminal offence for a person to either operate as a gangmaster without a licence or to breach the conditions of a held licence. Clause 2(2) sets out those persons who must obtain a licence; and clause 2(3) sets out those activities which are covered by the requirement to obtain a licence.
10. The activities set out in clause 2(3) fall into two categories. The first, (a), applies to those gangmasters who supply gang workers to principals under a contract in order that the gang workers do work for the principal. The second category of activities, (b), applies to those gangmasters who are contracted to complete a task with the use of their gang labour; the labour remaining under the supervision of the gangmaster during the completion of the task. The wording "the supply and supervision" is designed to avoid, for example, farmers themselves being caught in respect of their own workforces as it cannot be said that they have "supplied" their own workers.
11. It is not envisaged that the Act will apply to the majority of employment agencies. The activities set out in clause 2(3) are limited by clause 2(4). This clause relates to the work done *by the gang worker*, not the industry of the principal. It might be, however, that some employment businesses (as defined in s13(3) Employment Agencies Act 1973) fall within clause 2 if the work performed by the gang worker is caught by clause 2(4).
12. Clause 2(6) makes it clear that workers and agents do not need to apply for their own separate licences provided that their licensable conduct is done for an employer or principal. It is the employing or principal gangmaster who is expected to obtain a suitable licence. The word "principal" used in clause 2(6) is to be given its ordinary meaning (*viz* referring to agency law) in this clause in contrast to other clauses - see clause 1. In addition, only one licence needs to be obtained by companies, firms and unincorporated associations.

Clause 3: Administration and Enforcement

13. Clause 3(1) obliges the Secretary of State to exercise her discretion either to nominate an existing body or to set up a new body to run the licensing scheme and carry out enforcement functions.
14. The Secretary of State is given authority to prescribe regulations for the scheme of licensing and the enforcement regime by clauses 3(2) and (3), subject to the proviso that the contents of Schedule One must be adhered to in respect of the licensing scheme.
15. The Authority is given power within clauses 3(4) and (5) to carry out functions of licensing and enforcement. Any information it obtains, however, can only be used for the purposes of civil and criminal proceedings under this bill, under Clause 3(7). The Authority's licensing and enforcement capabilities are bolstered by the mandatory condition of each licence set out in paragraph 3(a) of the Schedule.

Clause 4: Obligations of Principals

16. This clause makes it an offence for a principal (as defined in clause 1) to use an unlicensed gangmaster. A principal will have a defence if he did not know and had no reasonable grounds to suspect that the gangmaster was unlicensed, or that he took all reasonable steps to ensure that the gangmaster was licensed.

Clause 5: Expenses

17. Clause 5 authorises expenditure from the Exchequer in respect of activities under the bill.

Schedule One: Requirement of Licensing Scheme instituted by the Secretary of State making Regulations under section 3(2)

18. Paragraph 1 sets out the matters to be covered by the Secretary of State in Regulations made under clause 3(2). These requirements are subject to the provisions of this Schedule.

19. A compulsory criterion to be applied by the Authority under paragraph 2 when considering matters relating to a licence is whether the applicant or licence holder has been convicted of an offence under this Act within the past 2 years.

20. A number of mandatory conditions required to be conditions of every licence are set out in paragraph 3. A breach of a condition can constitute an offence under clause 2(1). The conditions include requiring gangmasters to cooperate with the Authority, to provide identity to their workers and/or agents, not to withhold personal documents from gang workers, to produce for inspection by a principal licences or identification and to keep records relating to their licensable conduct for a period of 5 years starting with the date on which the licensable conduct was performed. It is intended that gangmasters who fail to keep records for a period of 5 years will commit an offence under clause 2(1) of the Act notwithstanding that they might (at the date of breaching this condition) no longer be engaging in licensable conduct. The relevant licensable conduct for that purpose being the conduct triggering the duty to keep records for five years. In clause 3(5) the Authority nominated or created by the Secretary of State has the right to inspect such records.

21. Paragraph 4 addresses the contents of the public register.