

## Gangmasters (Licensing) Act 2004

### 2004 CHAPTER 11

An Act to make provision for the licensing of activities involving the supply or use of workers in connection with agricultural work, the gathering of wild creatures and wild plants, the harvesting of fish from fish farms, and certain processing and packaging; and for connected purposes.

[8th July 2004]

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:—

(...)

#### *Scope of Act*

### **3 Work to which this Act applies**

(1) The work to which this Act applies is—

- (a) agricultural work,
- (b) gathering shellfish, and
- (c) processing or packaging—
  - (i) any produce derived from agricultural work, or
  - (ii) shellfish, fish or products derived from shellfish or fish.

This is subject to any provision made by regulations under subsection (5) below and to section 5 (territorial scope of application).

(2) In subsection (1)(a) "agricultural work" means work in agriculture.

(3) In this Act "agriculture" includes—

- (a) dairy-farming,
- (b) the production for the purposes of any trade, business or other undertaking (whether carried on for profit or not) of consumable produce,
- (c) the use of land as grazing, meadow or pasture land,
- (d) the use of land as an orchard or as osier land or woodland, and
- (e) the use of land for market gardens or nursery grounds.

In paragraph (b) "consumable produce" means produce grown for sale, consumption or other use after severance from the land on which it is grown.

(4) In this Act "shellfish" means crustaceans and molluscs of any kind, and includes any part of a shellfish and any (or any part of any) brood, ware, halfware or spat of shellfish, and any spawn of shellfish, and the shell, or any part of the shell, of a shellfish.

(5) The Secretary of State may by regulations make provision—

- (a) excluding work of a prescribed description from being work to which this Act applies;

(b) including work of the following nature as being work to which this Act applies—

(i) the gathering (by any manner) of wild creatures, or wild plants, of a prescribed description and the processing and packaging of anything so gathered, and

(ii) the harvesting of fish from a fish farm (within the meaning of the Diseases of Fish Act 1937 (c. 33)).

#### **4 Acting as a gangmaster**

(1) This section defines what is meant in this Act by a person acting as a gangmaster.

(2) A person ("A") acts as a gangmaster if he supplies a worker to do work to which this Act applies for another person ("B").

(3) For the purposes of subsection (2) it does not matter—

(a) whether the worker works under a contract with A or is supplied to him by another person,

(b) whether the worker is supplied directly under arrangements between A and B or indirectly under arrangements involving one or more intermediaries,

(c) whether A supplies the worker himself or procures that the worker is supplied,

(d) whether the work is done under the control of A, B or an intermediary,

(e) whether the work done for B is for the purposes of a business carried on by him or in connection with services provided by him to another person.

(4) A person ("A") acts as a gangmaster if he uses a worker to do work to which this Act applies in connection with services provided by him to another person.

(5) A person ("A") acts as a gangmaster if he uses a worker to do any of the following work to which this Act applies for the purposes of a business carried on by him—

(a) harvesting or otherwise gathering agricultural produce following—

(i) a sale, assignment or lease of produce to A, or

(ii) the making of any other agreement with A,

where the sale, assignment, lease or other agreement was entered into for the purpose of enabling the harvesting or gathering to take place;

(b) gathering shellfish;

(c) processing or packaging agricultural produce harvested or gathered as mentioned in paragraph (a).

In this subsection "agricultural produce" means any produce derived from agriculture.

(6) For the purposes of subsection (4) or (5) A shall be treated as using a worker to do work to which this Act applies if he makes arrangements under which the worker does the work—

(a) whether the worker works for A (or for another) or on his own account, and

(b) whether or not he works under a contract (with A or another).

(7) Regulations under section 3(5)(b) may provide for the application of subsections (5) and (6) above in relation to work that is work to which this Act applies by virtue of the regulations.

(...)

## *Licensing*

### **6 Prohibition of unlicensed activities**

- (1) A person shall not act as a gangmaster except under the authority of a licence.
- (2) Regulations made by the Secretary of State may specify circumstances in which a licence is not required.
- (...)

## *Offences*

### **12 Offences: acting as a gangmaster, being in possession of false documents etc**

- (1) A person commits an offence if he acts as a gangmaster in contravention of section 6 (prohibition of unlicensed activities).

For this purpose a person acting as a gangmaster does not contravene section 6 by reason only of the fact that he breaches a condition of the licence which authorises him to so act.

- (2) A person commits an offence if he has in his possession or under his control—
  - (a) a relevant document that is false and that he knows or believes to be false,
  - (b) a relevant document that was improperly obtained and that he knows or believes to have been improperly obtained, or
  - (c) a relevant document that relates to someone else,

with the intention of inducing another person to believe that he or another person acting as a gangmaster in contravention of section 6 is acting under the authority of a licence.

- (3) A person guilty of an offence under subsection (1) or (2) is liable on summary conviction—
  - (a) in England and Wales, to imprisonment for a term not exceeding twelve months, or to a fine not exceeding the statutory maximum, or to both;
  - (b) in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum, or to both.

In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (c. 44) , for “twelve months” in paragraph (a) substitute “six months”.

- (4) A person guilty of an offence under subsection (1) or (2) is liable on conviction on indictment to imprisonment for a term not exceeding ten years, or to a fine, or to both.

- (5) For the purposes of this section—

- (a) except in Scotland, a document is false only if it is false within the meaning of Part 1 of the Forgery and Counterfeiting Act 1981 (c. 45) (see section 9(1) of that Act), and

- (b) a document was improperly obtained if false information was provided, in or in connection with the application for its issue or an application for its modification, to the person who issued it or (as the case may be) to a person entitled to modify it,

and references to the making of a false document include references to the modification of a document so that it becomes false.

- (6) In this section “relevant document” means—

- (a) a licence, or
  - (b) any document issued by the Authority in connection with a licence.

### **13 Offences: entering into arrangements with gangmasters**

(1) A person commits an offence if—

- (a) he enters into arrangements under which a person (“the gangmaster”) supplies him with workers or services, and
- (b) the gangmaster in supplying the workers or services contravenes section 6 (prohibition of unlicensed activities).

(2) In proceedings against a person for an offence under subsection (1) it is a defence for him to prove that he—

- (a) took all reasonable steps to satisfy himself that the gangmaster was acting under the authority of a valid licence, and
- (b) did not know, and had no reasonable grounds for suspecting that the gangmaster was not the holder of a valid licence.

(3) The Secretary of State may by regulations make provision as to what constitutes “reasonable steps” for the purposes of subsection (2)(a).

(4) A person guilty of an offence under subsection (1) is liable—

(a) on summary conviction in England and Wales, to imprisonment for a term not exceeding 51 weeks, or to a fine not exceeding the statutory maximum, or to both,

(b) on summary conviction in Scotland or Northern Ireland, to imprisonment for a term not exceeding six months, or to a fine not exceeding the statutory maximum, or to both.

In relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003 (c. 44) , for “51 weeks” in paragraph (a) substitute “six months”.

(...)