STATUTORY INSTRUMENTS

2010 No. 649

EMPLOYMENT

The Gangmasters Licensing (Exclusions) Regulations 2010

Made - - - -	*8th March 2010*
Laid before Parliament	*10th March 2010*
Coming into force - -	*6th April 2010*

The Secretary of State makes these Regulations in exercise of the powers conferred by section 6(2) of the Gangmasters (Licensing) Act 2004(**a**).

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Gangmasters Licensing (Exclusions) Regulations 2010 and come into force on 6th April 2010.

(2) They do not extend to Northern Ireland.

Circumstances in which a licence is not required

2. A person does not require a licence to act as a gangmaster under section 6(1) of the Gangmasters (Licensing) Act 2004 in the circumstances specified in the Schedule.

Revocation

3. The Gangmasters Licensing (Exclusions) Regulations 2006(**b**) are revoked.

Bryan Davies
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

8th March 2010

(**a**) 2004 c.11.
(**b**) S.I. 2006/658.

SCHEDULE

Regulation 2

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 product 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 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 packaging facility.

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 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.

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 licensed under the Welfare of Animals (Slaughter or Killing) Regulations 1995(**a**) to slaughter animals.

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 England, is a qualification to which Part 7 of the Apprenticeships, Skills, Children and Learning Act 2009(**b**) applies;

(b) in relation to Wales, is a relevant qualification within section 30 of the Education Act 1997(**c**);

(c) in relation to Scotland, is an SQA qualification within the meaning of section 21 of the Education (Scotland) Act 1996(**d**) or an accredited qualification under section 3 of that Act.

14. 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 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; and

(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.

15.—(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 paragraph (b) (and who is not a child or step-child of A) who lives with A and has not attained the age of 18.

16. 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.

(**a**) S.I. 1995/731.
(**b**) 2009 c.22.
(**c**) 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.
(**d**) 1996, c.43.

PART 3

Shellfish gatherers

17. 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

18. 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 Order)

These Regulations revoke and remake the Gangmasters Licensing (Exclusions) Regulations 2006 (S.I. 2006/658). They make provision for the circumstances in which a licence to act as a gangmaster, required under section 6(1) 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 full impact assessment of the effect that this instrument will have on the costs of business has been prepared and placed in the library of each House of Parliament. Copies may be obtained from the Sponsorship, Employment and Tenancies Team at the Department for Environment, Food and Rural Affairs, 9 Millbank, c/o 17 Smith Square, London SW1P 3JR.

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