



Northern Ireland
Assembly

Committee for Agriculture and Rural
Development

OFFICIAL REPORT (Hansard)

Gangmasters Licensing (Exclusions)
Regulations (Northern Ireland) 2014:
DARD/Gangmasters Licensing Authority

11 March 2014

NORTHERN IRELAND ASSEMBLY

Committee for Agriculture and Rural Development

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Members present for all or part of the proceedings:

Mr Paul Frew (Chairperson)
Mr Joe Byrne (Deputy Chairperson)
Mr Thomas Buchanan
Mrs Jo-Anne Dobson
Mr William Irwin
Mr Declan McAleer
Mr Oliver McMullan
Mr Ian Milne
Mr Robin Swann

Witnesses:

Mr Ciaran Cunningham	Department of Agriculture and Rural Development
Mr Ian Japp	Gangmasters Licensing Authority
Mr David Nix	Gangmasters Licensing Authority

The Chairperson: I welcome Mr Ciaran Cunningham, deputy principal in DARD; Mr Ian Japp, from the Gangmasters Licensing Authority (GLA) and the Department for Environment, Food and Rural Affairs (DEFRA) enforcement division; and Mr David Nix, from the Gangmasters Licensing Authority and DEFRA's policy division. I believe that one or two of you have to leave pretty sharpish for other business back in England, so we appreciate your time with us today to clarify the situation and assuage the concerns of some members and the Committee in totality.

Mr Ciaran Cunningham (Department of Agriculture and Rural Development): Thank you for the opportunity to give you a bit of further background to the Gangmasters Licensing (Exclusions) Regulations (Northern Ireland) 2014. I am joined by Mr David Nix, who is head of licensing in the Gangmasters Licensing Authority and Mr Ian Japp, who is the authority's senior investigation officer for the UK. You requested a further briefing on the back of your last meeting, and I know that you have received that. I will take you through some background, outlining the 2014 exclusion regulations.

Following the Morecambe Bay tragedy in 2004, in which 23 Chinese cockle-pickers lost their life, the Gangmasters (Licensing) Act 2004 was introduced with the primary objective of curbing the activities of gangmasters or labour providers who exploit their workers or who act illegally. The 2004 Act applies to labour providers who operate in agriculture, horticulture, the gathering of shellfish and the processing and packaging of agricultural, fish and shellfish produce. The Act applies to the whole of the UK and established the Gangmasters Licensing Authority, which was set up to operate as a licensing scheme for gangmasters.

The aim of the licensing scheme is to prevent worker exploitation and to ensure that those who hold a licence operate within the law. The 2004 Act also created the offences of acting as an unlicensed gangmaster and the using of an unlicensed gangmaster. Following a UK consultation on the operation of the Gangmasters Licensing Authority earlier this year — it was represented in Northern Ireland and we had one response, from DARD's Forest Service — it was concluded that the GLA would focus on protecting the most vulnerable workers in areas where we needed to devote more resources to dealing with criminal gangmasters. It was decided that those who work in low-risk activities should be removed from the scope of the licensing scheme.

The Gangmasters Licensing (Exclusions) Regulations (Northern Ireland) 2014 build on the 2006 and 2010 exclusions regulations, which came through this forum, and which detail the circumstances where a gangmaster or labour provider does not obtain a gangmaster's licence. The 2014 regulations include those businesses and activities that were exempt under the 2010 regulations and detail additional businesses and activities that would not be required to obtain a gangmaster's licence.

Apart from businesses and activities currently exempt under the 2010 regulations, the additional businesses and activities that would be exempt from having to obtain a gangmaster's licence under the 2014 regulations include workers in the cultured shellfish sector and the forestry sector, veterinary practice workers, apprentices, farmers raising crops or livestock for a third party and voluntary workers.

The updated regulations remove the regulatory and cost burdens placed on certain businesses and activities where there is seen to be a low risk of worker exploitation. For example, the new 2014 regulations will allow for the supply of volunteers to carry out conservation work on agricultural land without the need for a gangmaster's licence. I live in the Mourne, so if the Mourne Heritage Trust wanted to get a group of people together to pick litter off the land, that voluntary organisation would have needed to become a gangmaster; that regulatory burden is not required in this instance.

The new regulations also introduce exclusion from licensing for the use of a worker in connection with the provision of a service to a third party in the forestry sector. Again, it is seen that the forestry sector is well regulated, and there is good coverage from other Departments. Those regulations mirror the Gangmasters Licensing (Exclusions) Regulations 2013 in England, Scotland and Wales, and they will mean that those businesses now exempt from having to obtain a licence will be on a level footing with labour providers in the rest of the UK.

You asked to hear more from DEFRA. My colleagues are best placed to field any questions that the Committee may have on enforcement and on wider policy issues.

The Chairperson: OK. Ian or David, do you want to add anything?

Mr Ian Japp (Gangmasters Licensing Authority): No. I am happy to answer any questions that members may have.

The Chairperson: OK, thank you very much. Ciaran, thank you for your presentation. You have outlined some of them, but what will the consequences be here if we put down a prayer of annulment, for instance, and the Assembly stops this SR? Page 4 of the DARD letter states that it would leave labour providers operating in Northern Ireland bearing an additional cost compared with their competitors in GB. Cost is one thing, but there is also the enforcement issue.

Mr Cunningham: Yes, my colleagues will fill you in, but, to get a licence, you have to meet regulatory requirements, and you have to keep records. David may say more about that. There are many requirements. Low-risk industries have a lot of good practice in place already. It is about £2,000 for a licence, which is a lot of money for some small businesses. As we said at the start, these areas are seen as low risk. It has been consulted on around the UK, and everyone agrees that they are low risk and that they can be managed in a better way.

The Chairperson: So low-risk industries or employers will be exempt from gangmaster regulations and requirements.

Mr Cunningham: Yes.

The Chairperson: If that is the cost burden, what is the enforcement issue?

Mr Cunningham: Ian is head of enforcement. Do you want to elaborate on that, Ian?

Mr Japp: The Gangmasters (Licensing) Act 2004 created the offence of not having a licence to supply into the sectors that we regulate. Those originally included the items that we are now seeking to have exempted, particularly forestry. Take Scotland, where I am based: there were more than 170 licences for gangmasters in forestry there. However, we have progressed; we were issuing those licences for free, and now we have exempted them totally. Therefore, instead of 1,200 licensed gangmasters, as we had before the regulations came in, there are just over 1,000. At the same time, however, we have regulated those industries. We have seen that there is very little chance of exploitation, and, because of the red-tape challenge that the authority was placed under by the government, we have decided that those parts of the industry that we previously regulated are the least contentious, if you understand.

The Chairperson: Does this subordinate regulation cover Northern Ireland, considering its specific nature of having a land border? Is it fit for purpose in Northern Ireland in that regard?

Mr Japp: I certainly think that it is. David gave us some figures. Some 105 businesses based in the rest of the UK supply into Northern Ireland, as it stands.

Mr David Nix (Gangmasters Licensing Authority): Sorry, that also includes people in the Republic of Ireland supplying to Northern Ireland.

Mr Japp: We have that, and we have 25 businesses based in Northern Ireland that can supply to the rest of the United Kingdom. As you can see, it is a reciprocal situation, and, as David said, we have businesses in the Republic of Ireland. We also have businesses with a gangmaster licence as far away as Hong Kong that can supply into anywhere in the United Kingdom.

Mr Swann: You have already touched on my concerns, which I raised at the past two Committee meetings. To clarify, Ian: a company supplying labour into Northern Ireland from the Republic must hold a gangmaster licence.

Mr Japp: Yes, that is correct.

Mr Swann: If they were found not to, who would prosecute them?

Mr Japp: We have actually found that. However, the Act that we work under applies only to the environments of the United Kingdom. If they are based in the Republic, we cannot prosecute them. What we can do, and have done, is encourage them to get a licence to supply workers. We actually took it to the Public Prosecution Service for Northern Ireland (PPSNI) to see whether it would enforce the prosecution, but, unfortunately, the law just does not apply. We cannot do it. It is the same as when another EU member state is supplying unlicensed workers. We work with government bodies in those areas to dissuade them from supplying or to encourage them to get a licence.

Mr Swann: So there is no enforceability.

Mr Nix: It is an offence to be unlicensed. However, the other side of the coin is that it is also an offence to use somebody who is unlicensed, so the recipients of labour from an unlicensed gangmaster would also be committing a criminal offence, so we can target them. If an unlicensed gangmaster is outside the UK, that makes prosecution incredibly difficult, if not impossible.

Mr Swann: Is there a requirement on the employer of a gangmaster to check his licence? Is that covered in the legislation?

Mr Nix: Yes.

Mr Swann: What penalty is there for not doing that?

Mr Japp: They can be prosecuted under section 13(1) of the Act. It relates to a labour user who takes workers from an unlicensed gangmaster. They can get as much as six months' imprisonment for the offence.

Mr Byrne: On the same theme, in relation to the mushroom industry in particular, which is largely an industry in the border counties of both Northern Ireland and the Republic, there is a fear that some workers are exploited and work in bad conditions, including housing conditions. Given that the gangmasters can be legal, what happens to those unfortunate individuals who are hired informally and may not have come through a legitimate gangmaster licensed operator? Is there a sufficient inspectorate to look after the interests of those unfortunate individuals who need protection?

Mr Japp: We have two officers based in Northern Ireland, whom I manage, along with a team of 29 enforcement officers throughout the United Kingdom, any of whom can be called across to assist the two officers based here. You must appreciate that we have to have information in the first place that a worker is being exploited. Unfortunately, because many are migrants, they are reluctant to come forward; however, on every occasion that we have received information, we have investigated. We have actually prosecuted two unlicensed gangmasters who were supplying to the mushroom industry.

Mr Byrne: Do the individuals here today regard it as a concern, or is it a manageable problem?

Mr Japp: Without knowing the extent, what I can say is that the two officers based here are extremely industrious and engage with all the bodies that we expect would tell us if workers were coming forward. By that I mean help agencies that such workers are more willing to approach rather than government officials or the police. We engage with them and weigh up the consequences and whether or not our action would mean any detriment to individual workers. However, if they are willing to work with us, we will, first of all, try to ensure that their working conditions are improved, and if, unfortunately, they are being supplied by an unlicensed gangmaster, we would have no hesitation in taking a prosecution and referring it to the appropriate prosecution authority.

Mrs Dobson: My question is largely along the line of the vice-Chair's. In my constituency there are a lot of migrants in the mushroom sector, for example. Many of them do not know the distinction between Northern Ireland and the Republic of Ireland and take what they are told on face value. I was going to ask how you ensure that the workers are fully aware of their employment rights. Language is a barrier for employment in the sector, as you rightly said, Ian. How do you ensure that they fully know their rights?

Mr Japp: We started licensing gangmasters in 2006. At that point, there was a huge publicity campaign, and we produced numerous leaflets, which we took to help agencies, notably the South Tyrone Empowerment Programme (STEP) in Dungannon, and we put them into libraries in Northern Ireland because many migrant workers come to libraries to use the computer facilities. The two officers based here have been in constant contact with any agency that supports workers' rights, and we continually update the situation. Recently, Romanians and Bulgarians have been allowed to work. We were speaking about the mushroom industry. Before that, they were coming in under the sector-based scheme, and the mushroom industry was an industry in which they could get a work permit. We have dealt with complaints from workers and have, fortunately, resolved them.

Mr Nix: One of our strengths is how inspectors interview workers when we go out. We always try to raise awareness when we go to interview, and hopefully there is an element of word of mouth from that.

Mrs Dobson: That connection is made. I am just concerned about vulnerability, particularly with the language issues.

Mr Nix: It is a huge challenge getting the most vulnerable people to come forward; you cannot pretend otherwise. It is difficult, and we rely on working with the support organisations. Our officers here have made good contact with them and in getting them to come forward with the intelligence that allows us to investigate allegations.

Mrs Dobson: How many inspections take place each year in Northern Ireland? How many GLA officers are operational here? Are they full time? You touched on two earlier. Could you outline that?

Mr Japp: There are two full-time officers in Northern Ireland. I supervise them along with 29 other officers. Last October, we were engaged in an operation in connection with workers in Lurgan. We brought over five officers to assist for three days. One of our greatest partners in dealing with worker exploitation is the PSNI, and we have done operations in Northern Ireland during which as many as 36

police officers were out working with us. With the two prosecutions that involved unlicensed gangmasters in the mushroom industry, there was that same commitment from the PSNI to assist us.

Mrs Dobson: Given the issues regarding the border, do you believe that the GLA in Northern Ireland is appropriately resourced? You spoke of bringing in officers from the outside to handle issues that are raised. Is there appropriate awareness of their existence amongst those who employ workers, especially migrant workers who come under your remit?

Mr Japp: We hope so. My understanding is that our research has shown that there are some 37 mushroom farms in Northern Ireland, and as part of the early remit of the officers, we tried to visit as many of them as possible to raise awareness of the GLA. Some of those farms recruit directly. If they are not employing a gangmaster, the GLA has no locus in connection with them; however, at the same time, we try to raise awareness of the standards that we try to promote in our Act.

Mr Buchanan: Under section 12, it appears that there have been five convictions and, under section 13, there has been one conviction. Can you clarify what constitutes a section 12 and a section 13 conviction?

Mr Japp: Section 12 is the offence of not having a gangmaster licence; that is what the Act says. The Act is very specific: you are not allowed to supply into the sectors that we regulate without the required licence. In other words, that would be the labour provider supplying to a labour user. The labour user taking workers from an unlicensed gangmaster is the section 13 offence. There is a time bar of six months on the section 13 offence from detection of the offence to the summons being issued. I can honestly state that, on all occasions when we put forward a prosecution, where there is evidence of a section 13 offence it is put forward with a more serious section 12 offence. Sometimes, the time bar has been exceeded by the time the investigation has concluded, and on other occasions the prosecutor has used the labour user as a witness against the labour provider.

Mr Buchanan: It would appear, surely, that if section 12 is for the gangmaster and if someone is caught with no licence and the fine is only between £500 and £750, that is not much of a deterrent for a commercial business that does not have a gangmaster's licence.

Mr Japp: I agree totally. However, I have no say in what fines should be. I can say that as we have progressed throughout the United Kingdom, the fines being levied are much more, I would say, realistic for a business person and a business. One business in England was fined some £45,000 in connection with supply to the milk industry. We have other prosecutions ongoing that, we think, will result in jail sentences for unlicensed gangmasters.

Mr Nix: Recently, someone in England received a seven-year custodial sentence. Sentencing is a matter for the courts. It is difficult, but the sentences are there and some will increase in light of the criminality that is happening.

Mr Buchanan: Are you aware of the scale of unlicensed businesses in Northern Ireland?

Mr Japp: When I joined this job eight years ago, it was thought that there were some 4,000 potential gangmasters in the United Kingdom. Because of the decline in the economy a great many will have left the industry, but with the numbers that we have at the moment we are saying that more 2,600 have come forward to apply for a licence over that eight-year period, and some of them have had to give up their licences. We are making good inroads into who we should be licensing. There will always be work ongoing in connection with this, but only if we receive intelligence along with working with the partner agencies. The officers here and the rest of the officers have the will to take forward any investigation.

Mr Buchanan: You had five convictions under section 12. What period of time was that for?

Mr Japp: The officers in Northern Ireland started in 2007, so those are the convictions to date. We were encouraging people to get a gangmaster's licence in the first place. Sometimes, a warning was given on the proviso that people came forward and took a licence. It was not necessarily the first choice to prosecute, but, as time has gone on, we have realised that because the legislation has been in place for some time, perhaps prosecution is now the way forward.

Mr Nix: The first conviction was in 2010.

Mr Buchanan: Quite a number of people seem to have applied for a gangmaster's licence. Are you aware of people still operating without one?

Mr Japp: We have three prosecutions going forward to the Public Prosecution Service in Northern Ireland at the moment in connection with unlicensed gangmasters. Officers are investigating other offences in connection with that as we sit here.

Mr McMullan: Thank you for your presentation. What is the difference between a gangmaster and an employment agency?

Mr Nix: There is no difference. Employment agencies that supply workers into the GLA-regulated sectors need a gangmaster's licence.

Mr McMullan: So where did the word "gangmaster" come from? It seems very exciting.

Mr Nix: It is an historic term. There was a gangmaster's Act in the 19th century. It is a term that the industry hates, but from a publicity angle it is very useful for us because it grabs headlines and it sticks in the mind. The industry is very uncomfortable about it because it has negative connotations. There are many good gangmasters and a few, sadly, who tarnish the name. It is a term that we are stuck with because it is in our primary legislation. As I said, we make use of it for publicity purposes.

Mr McMullan: How does social services work? If you are after the gangmasters, I take it that you are after the ones who employ people. What about the people who are employed? Are they all getting the minimum wage?

Mr Nix: The requirements for having a licence were adopted from licensing standards. That sets the framework that we expect people to comply with. It covers common-sense laws that every other business should comply with, including those on the minimum wage, health and safety and transport or accommodation if they are provided. There should also be compliance with the law on the right to work.

Having a licence is the framework for compliance. However, having a licence does not mean that you are perfect all the time: people can drop below the standard, and that is where our compliance comes into effect.

Mr McMullan: So, it is not compulsory.

Mr Nix: It is.

Mr Cunningham: It also works in DARD. We have minimum agricultural wages, so if these guys go in on a specific agricultural issue and become aware that people are not being paid the correct agricultural wages, DARD can go in and address that.

Mr McMullan: How do you work with immigration officials? You see TV programmes with immigration officials taking illegal immigrants away. Are they not gangmasters too?

Mr Japp: Most people working for gangmasters in the UK come from countries that are members of the EU and have the right to work here. The A8 countries came in in 2004, followed by the Romanians and the Bulgarians. As part of our inspectorate role for gangmasters, or would-be gangmasters, we ask to view workers' employment history, and if we detect that somebody may not have the right to work in the United Kingdom, we have a memorandum of understanding with the Home Office's immigration department and alert it. In some cases, we remain on the premises until officials from that department can attend to deal with the matter.

Mr McMullan: You talk about gangmasters being as far away as Hong Kong. How does that work?

Mr Japp: That gangmaster undertakes to supply workers in the United Kingdom; he was initially based in the Isle of Man and came for inspection. If we want to inspect his records and business model further, he is requested to come to the United Kingdom for a compliance inspection.

Mr McMullan: So we are licensing people to take workers from Hong Kong over here to work in their own industries.

Mr Japp: Not necessarily, sir.

Mr Nix: The business is based in Hong Kong more for tax purposes rather than to bring people over.

Mr McMullan: So we are supporting a tax loophole. That makes a great headline.

Mr Nix: That is a matter for HM Revenue and Customs.

Mr Japp: With whom we also have a memorandum of understanding about the passing of intelligence.

Mr McMullan: I wish the taxman had the same memorandum of understanding with me.

Mr Swann: Do you work with the National Crime Agency?

Mr Japp: Yes, we do. It has been realised recently that organised crime groups have started infiltrating the supply of workers. Anybody who comes to the attention of the police through the national referral mechanism is signposted towards the National Crime Agency, and we work with it. I attend weekly meetings with police forces at which a representative of the National Crime Agency is seated at the table.

Mr Nix: We recently did an joint operation with the police in Cambridgeshire. On the day of the operation, there were 300 officers, a large number of whom were from the National Crime Agency.

Mr Swann: Taking that into consideration, would it be a drawback, if the legislation were to be introduced in Northern Ireland, that the National Crime Agency has no locus here?

Mr Japp: As I say, since I started to work for the GLA, I have had the utmost cooperation from PSNI officers. I have recounted how they can assist us. In October, we had every bit of cooperation from them without the National Crime Agency.

Mr Swann: If we had a National Crime Agency, would that benefit your workers?

Mr Japp: It obviously would. Any partner is a benefit.

The Chairperson: Appendix II of annex A of the exclusion regulations states:

"Paragraph 18 of the Schedule introduces an exclusion for farmers who use workers, either directly employed by them or who have been supplied to them by a licensed gangmaster, to grow crops or raise livestock where the crops and livestock on behalf of a third party. The exclusion would only apply where ownership of the crops or livestock remains with the third party."

In what scenario would that be the case in Northern Ireland? Are there any examples that you know of?

Mr Nix: I am not sure whether that is the case in Northern Ireland. I imagine that it is. In England, Scotland and Wales, the way the farming industry operates is that one farm may have surplus crop and will come to arrangements with another farm for the sale and harvesting of that crop. That is quite commonplace, and we found that, inadvertently, numerous farmers whom the legislation never intended to class as gangmasters were suddenly caught by the Act and could potentially be committing an offence. That was the driver behind that exclusion, and I suspect that similar kinds of arrangements take place in Northern Ireland. You may grow a certain amount but do not need all of it so you come to an arrangement with a fellow farmer. With those kinds of arrangements, you could inadvertently make one of them a gangmaster. It is about trying to deal with the technical practicalities of how the farming industry operates.

Mr Milne: I have a short question. Thanks for the presentation. Maybe it has been covered. Is it £2,250 for a licence?

Mr Nix: That is the upfront cost when somebody first applies.

Mr Milne: Is it reviewed and renewed after a certain time?

Mr Nix: The licence is granted for a year, and, after that, the renewal fee comes down to £400 for the smallest businesses with a turnover of less than £1 million. There is no compliance check at renewal. As soon as somebody is licensed, we are then completely intelligence-led. We do not want to burden people who are compliant. That is where we rely on good intelligence, and we then go out and inspect as necessary.

Mr Cunningham: It is about rewarding good compliance. There is no point putting a huge cost on somebody who complies.

Mr McAleer: I apologise if this has already been asked because I appreciate that I was a little bit late. Has the topic of risk been mentioned yet? How do you determine which activities are low risk so that they can be removed from the regime?

Mr Nix: Last summer, DEFRA had an extensive consultation, and the areas identified were where the chances of worker exploitation, particularly measured against our licensing standards, were considered to be low enough that they should be deregulated from needing a licence. The list of activities that are being excluded has, by and large, led to negligible enforcement and compliance activity for us over our lifetime. We have had that experience and know that we will not put more people at risk by removing them from the visibility of the licensing regime. I will not say that there will not be one or two isolated instances, but, taken across the piece, we are comfortable that, if you take those out, we can then be better targeted at the highest-risk areas. That was the rationale behind the list of activities that were excluded.

Mr McAleer: Is the legislation robust enough to change that, should any risk levels change?

Mr Nix: The statements by DEFRA Ministers at the time were that, if evidence came to the contrary, those activities could be reintroduced into licensing.

The Chairperson: Do members have any other queries? I will put the Question but, before I do, if there are any other queries, this is the time to ask while we have the gentlemen here.

The Question is that the Committee for Agriculture and Rural Development has considered SR 2014/23 the Gangmasters Licensing (Exclusions) Regulations (Northern Ireland) 2014 and has no objections to the rule. Do members agree?

Members indicated assent.

The Chairperson: Thank you very much for your time. It has been very useful to have you here. You have explained a lot to us, which we appreciate.

Mr Japp: Allowing us to come on early is much appreciated.

The Chairperson: That is no problem.