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17 October 2008

**DEFRA CONSULTATION ON THE OPERATION OF  
THE GANGMASTERS LICENSING (EXCLUSIONS) REGULATIONS 2006**

**RESPONSE BY THE  
ASSOCIATION OF LABOUR PROVIDERS**

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**Introduction**

On 21 July 2008 DEFRA published a consultation document on the operation of the Gangmasters Licensing (Exclusions) Regulations 2006. Comments are required by 20 October 2008. The consultation paper notes that the current arrangements have worked reasonably well but that some feedback suggests that refinements are necessary to widen the range of excluded circumstances.

This paper is the response of the Association of Labour Providers (ALP). The ALP was established in 2004 and now has some 200 members all of which are regulated by the Gangmasters Licensing Authority. For the most part the members provide labour to the food and agricultural sectors. While the licensing arrangements are crucial to their operations, this particular consultation document is only of peripheral interest.

**Executive Summary**

- The proposed relaxations of the scope of the exclusions in respect of detailed arrangements between farmers seem reasonable, as long as significant loopholes are not created.
- The exclusion of workers supplied by charities and quasi-public organisations may open a loophole to avoid licensing.
- The exclusion of the provision of labour between separate corporate entities within the same ownership is supported.
- There is no justification for excluding forestry from regulation; consideration of this should only occur as part of a wider review of the scope of regulation.
- SAWS agents should be brought within the scope of the regulation.

## **General Comments**

The original Exclusion Regulations followed a comprehensive consultation exercise, as a result of which they have worked well. The ALP believes that the current exclusions are broadly right. Members have not reported any problems with respect to the operation of the Regulations.

### **Changes in respect of Farming (questions 1 - 13)**

The first set of issues identified in the consultation paper, covering questions, is almost entirely concerned with detailed arrangements within the farming industry. The Association has no particular expertise on these matters, but understands that there may well be scope for improving the wording of the Regulations in a number of specific areas. The Association is not opposed to any changes in the wording that make the operation of the Regulations more satisfactory for farmers, as long as no significant loopholes are created.

### **Quasi-Public Organisations and Charities (questions 14 - 16)**

The Association believes that a blanket exclusion on charities and public bodies may open a loophole for organisations seeking to avoid the licensing arrangements.

### **Supply between Separate Corporate Bodies under Same Ownership (questions 17 -18)**

The question is raised as to whether the supply of workers or services between separate corporate bodies under the same ownership should be excluded from regulation. Such an arrangement is not unusual. Businesses can choose to structure in a variety of ways, and it is quite artificial to regulate activity between two companies within a group when the same activities carried out by two autonomous divisions within a group would not be regulated.

Accordingly, the Association supports the exclusion from licensing of supplies between corporate bodies within the same ownership. This would not give scope for businesses to re-structure their activities in order to take advantage of the exclusion. By definition, businesses can only re-structure their own activities not anybody else's. Businesses are not going to form part of a group simply to avoid regulation.

### **Pea-vine Co-operatives (question 19)**

The Association is in a position of complete ignorance on this matter, and is indifferent as to whether there should be an exclusion here.

### **Forestry Industry (questions 20 -21)**

In the wide-ranging debate on the scope of the legislation when regulation was introduced there was general agreement that there should be no significant exclusions, as drawing lines between particular activities was bound to create anomalies. The proposal that forestry might be removed from the scope of the licensing scheme is at a different level from the other proposals in the consultation document. This would remove from licensing a whole area of activity which has been covered from the beginning. It may well be the case that there is little evidence of worker exploitation, but then the same can apply to other sub-sectors of the agriculture and food industry. The argument that the use of gang labour is low is irrelevant. Gang labour is not used in much of the food industry. It is quite wrong to equate the outsourcing of labour supply with gang labour.

Consideration of whether forestry should be excluded from regulation must be part of a much wider debate on the scope of regulation and not be covered through this consultation, which is concerned with very detailed issues.

### **Exclusion of SAWS agents**

Currently, overseas agents who source and supply workers to SAWS operators are not required to be licensed by the GLA as such agents “will only act in line with the Home Office definition of third parties / agents used by SAWS Operators”. The Association can see no reason for this exclusion. There is the same scope for malpractice in this area as there is in the provision of labour generally. Predominantly this exists in the charging of fees for work finding services and the compulsory use of services provided by the agent. Accordingly this exclusion should be removed.