

Brief: Gangmasters Licensing Bill

17 February, 2004

Summary

The Association of Labour Providers (ALP) is the newly established trade association for “gangmasters”. Its position on the Bill is:

- Recognises the problems that the Bill seeks to address and supports the need for action to deal with these problems.
- Questions the extent to which further legislation would be effective in addressing activity which is already illegal.
- Is concerned about the costs that would fall on the reputable operators.
- Supports enacting the legislation but leaving it to the government to decide whether to implement in the light of subsequent developments (in particular the ALP sees the need to strengthen considerably the existing enforcement regime and encourage the development of a code of practice for the reputable labour providers).

Introduction

The Labour MP, Jim Sheridan, is introducing a Private Member’s Bill to provide for compulsory a licensing scheme for “gangmasters”. The TGWU has put forward the legislation and is promoting it. The second reading debate is on 27 February.

The Bill:

- defines a “gangmaster” with reference to “licensable conduct”
- requires gangmasters to obtain a licence
- makes it a criminal offence for a gangmaster to engage in licensable conduct without a licence
- makes it a criminal offence for users of gangmasters to engage an unlicensed gangmaster
- requires the Secretary of State to set up a scheme of licensing and enforcement.

The problems

The problems that the Bill is seeking to address are well known and generally accepted. While most labour providers operate within the law, and indeed provide an essential service to the growing and packing industries in particular, a significant number operate outside the law, exploiting their workforce in a number of ways and also employing people not entitled to work in the United Kingdom. The problems were exemplified in the Morecambe Bay tragedy.

It is common ground among all interested parties that the problems need to be addressed by public policy measures. The debate should be about the most effective means of securing the desired outcome. The fact that little progress has been made in dealing with the problems over the last few years is indicative of just how difficult they are.

Would the Bill be effective?

The Bill proposes the introduction of a licensing system for gangmasters but gives very little detail. It would be open to the government to decide whether a new regulatory body should be established or rather whether an existing one should have this additional function; the terms of the licensing scheme would also be a matter for secondary legislation.

Experience suggests that it would take at least two years, if not longer, to implement a licensing scheme from the legislation being enacted. The Security Industry Act is a good example. This was conceived in the late 1990s; the legislation was passed in 2001, and the provisions are only now coming into effect. At best, therefore, even if the legislation is passed, it would not have any significant effect for a few years. Implementation can always be expedited if there is the political will – but at the risk of producing an unsatisfactory regime because of inadequate planning and consultation.

There is also the point that the activities that the legislation is seeking to address are largely already illegal. The effect of the Act would be to make it an offence to be a gangmaster without a licence, but this would hardly be of concern to people who already ignore the law. Licensing would therefore achieve nothing in itself unless accompanied by effective enforcement. Arguably, if there was proper enforcement of the existing legislation there would be no need for a licensing regime. The question is whether licensing would make enforcement easier and, if so, whether the costs of the licensing system would be outweighed by the benefits.

Legislation in response to disasters is often ineffective in practice and it is important that the legislation is properly thought through. While some may argue that the legislation could have prevented the Morecambe Bay tragedy, it is perhaps worth noting that cockle picking was not covered by the draft Bill that had been circulated by the TGWU. References to fish and shellfish have now been included in the Bill. However, it is not yet certain that the activity in Morecambe Bay would count as gangmaster activity under the Bill (see below).

Concerns about the Bill

While the ALP supports what the Bill is trying to achieve, it has a number of concerns:

- The term “gangmaster” is pejorative – and no doubt is used for this reason. The term “gangmaster” should be replaced by “labour provider”.
- In its briefing material, the TGWU has suggested that an appropriate licence fee in today’s terms would be £3,000. This is a huge figure for small businesses. If, in practice, it simply added to their burdens without reducing the unfair competition from illegal gangmasters, the whole operation would be counterproductive. There is an interesting analogy in respect of sex shops, where some local authorities levy heavy fees on reputable operators, the proceeds being used in a generally unsuccessful attempt to curb the illegal operators.
- This government, like most governments, is committed to deregulation but what is being proposed is a significant increase in regulation.
- The Bill proposes criminal sanctions on farmers and packhouses for employing unlicensed gangmasters. These penalties seem very severe.
- The legislation picks out only farming, fishing and packhouses. It does not cover, for example, construction, sandwich making or cleaning. Many “gangmasters” provide labour for a variety of businesses; one of their business strengths is their ability to do precisely that. It seems odd to single out farming, fishing and packhouses when the same problems manifestly exist in other industries.

There is a more general point. The Bill is concerned not with the terms on which workers are employed but rather with the terms of which workers are employed by someone who then provides labour to another. If it transpires that those who died in Morecambe Bay were employed by someone who sold the cockles then this would not be counted as “gangmaster” activity and the Bill would have no effect. Similarly, if someone contracts with a farmer to pick and sell crops this would not be covered whereas if they contract to provide labour to pick crops which the farmer sells they are. This leads to a general question of why there should be a licensing regime for those who provide labour for others as opposed to those who employ labour. Also, as happens in other areas, disreputable gangmasters could, to some extent, re-organise their activities so as not to be caught by the legislation.

The law of unintended consequences should be noted here. As drafted the Bill would appear to catch the provision of a temporary secretary to a packhouse. Is this the intention? More generally, what is the position of employment agencies under the Bill? What would be the position of a group of farmers who “lend” their workers to each other to help cope with peaks and troughs in their need for labour? There are probably many other similar questions that could be asked.

The Bill (in particular paragraph 3 of the schedule) seems to assume that gangmasters only provide workers to business that falls within the Bill. How is a gangmaster who provides labour to a packhouse (regulated under the Bill), who employs labour directly for their own farming activities (not regulated) and who provides labour to the construction and office cleaning industries (not regulated) supposed to run his business? Will he be expected to keep separate records for licensed and unlicensed activity?

ALP policy

The ALP recognises the problems that the legislation seeks to address but also notes that it could well be two years before any legislation could have effect. It has no problem with the Bill as drafted provided the concerns set out in this brief are met as the Bill goes through Parliament and in drawing up the secondary legislation. However, it believes that the government should indicate that the Bill may not be enacted if other measures are capable of having the desired result without the imposition of the licensing regime. The ALP also believes that it is essential to devote more resources to enforcing existing legislation.

Work is going on to develop a code of practice for labour providers. The ALP has already committed itself to making compliance with a meaningful code a condition of membership of the Association.