



RESEARCH PAPER 04/17  
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# ***The Gangmasters (Licensing) Bill***

**Bill 17 2003-04**

Gangmasters have been operating in the countryside as legitimate contractors for more than 150 years. There have been abuses in the past, but many believe that the situation is now much worse, with some gangmasters using illegal immigrants and ignoring employment legislation, as well as sometimes engaging in other criminal activity. The Bill, a Private Member's Bill introduced by Jim Sheridan, would introduce compulsory registration of gangmasters throughout the UK. It is due to have a Second Reading on Friday 27 February.

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## Summary of main points

The *Gangmaster (Registration) Bill 2003-04* is a Private Member's Bill introduced by Jim Sheridan, due for Second Reading on 27 February. It would require the registration of gangmasters supplying labour for agricultural work, defined in a broad sense. It would be an offence for anyone to engage in this activity without a licence. It would also be an offence for anyone to employ an unlicensed gangmaster. Licensed gangmasters would have to identify themselves to their workers, including producing the licence number of the gangmaster's licence, and should keep records of the workers employed in licensable conduct.

Concern has been expressed about the activities of agricultural gangmasters for well over a century, with legislation in 1867 to prevent abuse. That legislation was repealed in 1965. For some time this appeared to be an agricultural issue, almost entirely in Lincolnshire and Norfolk. More recently, concern has spread. It is believed that gangmasters are employing large numbers of illegal immigrants, who are treated badly, in contravention of employment legislation. Intimidation apparently plays an important part in this world. The tragedy of the Chinese cockle gatherers drowned in Morecambe Bay in February 2004 drew attention to the issues.

The Government supports the objectives of this Bill, but is undecided about the merits of a statutory licensing system. When the Environment, Food and Rural Affairs Committee reported on gangmasters in September 2003, the Committee doubted that statutory registration was the answer, at least by itself. Instead, the Committee called for the Government to give a much higher priority to enforcement. The Government response, in December 2003, also played down the likely usefulness of a statutory registration scheme. However, both Government and Committee accepted that a statutory scheme might be needed if other approaches failed. This paper covers the main policies that have been tried: the Government's Operation Gangmaster and the Ethical Trading Initiative attempt to bring together different sides of the industry to agree not to use the products of gangmasters in breach of employment law.



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# I An Overview of the Issue

## A. Traditional gangmasters and modern problems

Gangmasters are people who supply gangs of labour for particular purposes. The term “gang” here does not have the sinister connotation of “criminal gang” or “triad gang”. It just means a group of labourers. The system has operated for seasonal labour in farming and horticulture for more than a century. Gangmasters are not so very different from other sub-contractors or employment agencies supplying labour for a particular purpose. Traditionally the gangmaster negotiates an overall fee and pays the workers. For seasonal work, that is far more sensible than for each individual farmer to have to deal with wages for each individual in the gang.

There is nothing necessarily wrong in bringing in immigrants from outside the European Union to do seasonal work in farming. There is a special Home Office scheme, the Seasonal Agricultural Workers Scheme, to facilitate it. In 2003/4 there were 25,000 places on the scheme. The Home Office website states that the scheme is open to students aged 18 or more from countries outside the European Economic Area. The scheme is run for the Home Office by Operators who place the students on farms and look after accommodation. Those on the scheme should be paid at least the national minimum wage. They will be informed in advance about their employment rights, rights under health and safety legislation and the minimum standards of accommodation to expect.<sup>1</sup>

The gangmaster system is not illegal and nobody suggests that it should be. However, in some circumstances it has come to be associated with a range of criminal activity – breaking employment laws, ignoring health and safety, illegal immigration and intimidation.

Just after the 1997 Election, Sir Richard Body MP – who had campaigned for years about gangmasters - urged the new Government to consider licensing gangmasters. He mentioned the large scale need for casual labour in horticulture and agriculture. He argued that the system had worked well until high unemployment led to people coming from other parts of the UK. He described how traditional honest gangmasters were being undermined by competition from criminal gangmasters using intimidation over illegal immigrants:

**Sir Richard Body (Boston and Skegness):** ... According to the Department for Education and Employment, there are now about 800 gangmasters, who fall into two categories. The first comprises those whose names, addresses and telephone

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<sup>1</sup> Home Office Website  
[http://www.workingintheuk.gov.uk/working\\_in\\_the\\_uk/en/homepage/work\\_permits/saws.html](http://www.workingintheuk.gov.uk/working_in_the_uk/en/homepage/work_permits/saws.html)

numbers can be found in the Yellow Pages or the telephone directory. They can be easily identified by Government Departments and, generally speaking, they engage local people. They often employ their friends, relations and neighbours. They depend on having a good reputation, and over the years they have tried to do an honest job. If they were not honest to their friends and neighbours, they would not have gangs. However, their position has become almost untenable because of the other category of gangmasters who are in the vast majority--there are only about 50 or 60 in the Yellow Pages--many of whom have criminal records and continue to commit acts of dishonesty and violence.

There is such fear among the gangsters that it is impossible for me to recount the experience of any gangster... Indeed, none of the honest gangmasters is willing to be forthcoming about the activities of the others...

The result is unfair competition. Wages are almost the only variable cost in producing and processing vegetables. Farms and factories that can reduce their wage costs can hold down their prices. As the Minister knows only too well, about five major supermarket chains are competing with each other and trying to keep down prices, with the result that at the end of the chain gangsters are working at a derisory rate of pay.

The position has become worse in the past 12 months. Not only are gangmasters recruiting people who are on social security, but they have agents in eastern Europe--in Poland, the Ukraine and even Russia--who are bringing illegal immigrants to Britain. I cannot say how many there are, but it is certainly an appreciable number. Those people are told that, if they come to England, they can earn as much in one day as they get in one week in their own country, and that is true...

There was no need [when there was full employment] for any control over gangmasters as, on the whole, the system worked successfully. However, the position has now completely changed and I can think of no solution other than a return to licensing...The previous Government tried; they took a number of steps, but they all failed. I urge the Minister to reconsider licensing.<sup>2</sup>

## **B. The Environment Select Committee Report on Gangmasters**

The Environment Select Committee Report on Gangmasters in 2003 concluded that the Government had not tackled the problem effectively. The report contained the following summary:

The term gangmaster describes somebody who provides 'gangs' of casual labour to the agriculture and horticulture industry. Many gangmasters operate within the law; clearly there are many who do not. We were very disappointed to find that six years after setting up an inter-departmental working party on the issue, the

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<sup>2</sup> HC Deb 21 May 1997 cc 677-8



Government appears to be no nearer to establishing the numbers in either category.

We conclude that the Government has failed to confront the problems in the industry. Enforcement of existing legislation is perfunctory and uncoordinated. We were singularly unimpressed by the evidence from Operation Gangmaster, the Government's cross-departmental enforcement body. The enforcement agencies are insufficiently resourced and lack the political backing to make a significant impact on illegal activity within the agriculture and horticulture labour market.

We also conclude that the decline in the supply of casual labour in rural areas and the relationships between the supermarkets and their suppliers are significant contributory factors to the problem. There are issues which require a cross-departmental response. The Government should establish a mechanism by which different Departments can work together to develop appropriate policy solutions. We make a number of suggestions for such solutions based on the evidence received during the course of our inquiry.

Underpinning the way labour is organised is the desire to ensure that fresh produce reaches our tables at the cheapest price. Our evidence suggests that meeting that desire is not without cost. The Government and the industry must now confront these issues if we are to be convinced that abuses of casual labour in rural areas are not an integral and unavoidable consequence of the way the food chain is currently structured and regulated.<sup>3</sup>

Three points from that summary are worth noting. First, the Committee did not recommend a compulsory registration system. Second, it severely criticised the Government's flagship policy "Operation Gangmaster". Third, it criticised supermarkets for relentless pressure on prices and for failing to take responsibility for the working conditions of those producing the items for sale.

The Committee called for the Government to give a far higher priority to enforcement and to undertake a serious study of the use of casual labour.

### **C. The Informal Economy**

A report to the Treasury by Lord Grabiner in 2000 on the informal economy described the obvious benefits of the informal economy to those involved, particularly those on benefits who are also working. He also covered the disadvantages, with workers in the informal economy unprotected from exploitation and unable to build up pension rights. Another passage deals with the role of illegal immigrants in the sector:

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<sup>3</sup> Environment Food and Rural Affairs Committee, *Gangmasters*, 18 September 2003, HC 691 2002-03

**4.12** Broadly speaking, illegal immigrants are prohibited by law from working. It is also illegal for employers to hire them. Employers have a duty to check that new employees have a right to work. So, by definition, if illegal immigrants do work, they are part of the informal economy.

**4.13** It is inherently difficult to give an accurate estimate of the numbers involved. But, as might be expected, the sectors where illegal immigrants are usually found working are those where casual and cash-in-hand work is widespread: for example, catering, contract cleaning, farm-working and the clothing industry. Some employers deliberately take advantage of illegal immigrants as a source of cheap labour. In a recent cross-Government operation, three out of six agricultural firms investigated were found to be employing illegal immigrants (most from Eastern Europe): 26 were deported as a result of the exercise...<sup>4</sup>

That comment, of course, inadvertently raises another issue. Illegal immigrants cannot go to the authorities to complain of abuses because they would be deported.

## **D. Illegal Workers**

The term ‘illegal workers’ is useful shorthand for people who work in the UK despite their immigration status not allowing them to do so. It covers both those who are working while here illegally and those who are working while here legally but prohibited from working.

Somewhat unsurprisingly, there are no statistics on the scale of illegal working in the UK, but the Government is looking into the possibility of estimating the numbers of illegal immigrants. It has also implemented various measures to combat both illegal immigration and illegal working, including:

- tightening up border controls, including the visa regime as well as port inspections;
- increasing the number of immigration and asylum removals;
- encouraging voluntary departure throughout the asylum process;
- introducing new offences concerning unlawful employment of immigrants;
- setting up an Illegal Working Steering Group,
- introducing proposals for an ID card; and
- proposing a new offence of trafficking for labour exploitation.

A Library Standard note on *Illegal Workers* (SN/HA/2917) gives more details of the possible scale of illegal working and government policy on tackling it.<sup>5</sup>

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<sup>4</sup> Lord Grabiner QC, *The Informal Economy*, March 2000  
<http://www.hm-treasury.gov.uk/media/60F77/74.pdf>

<sup>5</sup> This section is written by Arabella Thorp.

## E. Tragedies casting light on appalling living conditions

The appalling tragedy of the drowned cockle fishers in February 2004 showed a glimpse of the very worst side of gangmasters. Although the full facts are not at all clear, it appears that the unfortunate fishermen were being paid a very small amount to undertake the dangerous work. Clearly legislation relating to minimum wages and to health and safety were being ignored. Beyond that, however, there were suggestions of illegal immigration and further criminal activity.

An article in the *Daily Telegraph* described some background to the tragedy:

Those who perished in Thursday's disaster are thought to have been paid a pittance for their day's work. Had they survived, they would have returned to "slave houses" where they lived in cramped and squalid conditions.

The fear of retribution from their gangmasters has prevented many of the 16 survivors - the majority of them illegal immigrants - from volunteering information to the police. Instead, officers have had to rely for help largely on those in the "slave houses" whose friends and loved ones never returned.

Detectives have been shocked to see how those on the front line of the multi-million pound cockling industry have been living in their short time in Britain.

"They have probably paid a lot of money to come here," said Det Supt Mick Gradwell, who is leading the investigation. "Once here they have been living in appalling conditions and certainly working that way. We have traced some to four- or five-bedroom houses, where up to 40 people have been residing. These were extremely cramped conditions, with mattresses on the floor, hardly any food and poor heating. When they went out on to the bay they were not properly equipped, and they were out there at the wrong time. It does build up a very tragic picture of what has happened."<sup>6</sup>

There have been other tragedies as well, albeit less appalling. As recently as January 2004, the *Guardian* reported on a Chinese worker who dropped dead after a 24 hour shift in a factory at Stockton on Tees. The workers, often illegal immigrants, were paid very little and had forged papers.<sup>7</sup> The *Observer*, in February 2004, stated that UK gangmasters control "100,000 'slave' labourers". The article referred to further examples:

Three Kurdish workers were killed last July when their van collided with a train on a level crossing in Worcestershire, where they had been employed by

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<sup>6</sup> "Police raid cockle 'slave houses' in search of gangmasters", *Daily Telegraph*, 9 February 2004

<sup>7</sup> "Tragic death that uncovered the shadowy world of Britain's hidden Chinese workers", *Guardian*, 13 January 2004

gangmasters to pick spring onions. The previous month 18 Chinese labourers narrowly escaped death when the three-bedroom house they had been living in caught fire. Last week 54 Greek migrant workers employed to plant bulbs in Cornwall complained they had been starved and threatened with sticks.<sup>8</sup>

However, the emotions created by such tragedies may not necessarily lead to the best solutions. It is difficult for legislation to tackle exploitation of illegal immigrants because the victims dare not go to the authorities for fear of being deported. If a criminal is running a network involving illegal immigration, intimidation and tax fraud, he may not mind risking being prosecuted as an unregistered gangmaster.

## **II Relevant employment law and enforcement**

### **A. Known abuses of employment rights**

According to the Transport & General Workers Union, the most common abuses experienced by agricultural “gang labour” are:<sup>9</sup>

- Non-compliance with the Agricultural Wages Order (see below) which entitles workers to various employment rights such as a minimum wage, paid holidays, sick pay and maternity and paternity leave.
- Unlawful deductions from wages for transport, food and accommodation, work clothing and equipment, which, in many cases, are not indicated on pay slips.
- Workers are encouraged to commit benefit fraud. They are sometimes asked by gangmasters if they want to be registered or not, on the understanding that if they are not registered they would be paid less but could then receive state benefits as their wage income would be difficult to trace.
- Debt and the illegal status of some workers allow gangmasters to take advantage of immigrant labour, for example by making them work long hours or making excessive charges for food and accommodation, as well as paying wages well below the statutory rate.
- Violations of health and safety regulations, such as the lack of availability of protective clothing and equipment as well as a lack of drinking water or toilets.
- In many cases workers are subject to fear by threats of losing their jobs, verbal abuse or physical attack.

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<sup>8</sup> “UK gangmasters control 100,000 ‘slave’ labourers”, *Observer*, 15 February 2004

<sup>9</sup> Ethical Trading Initiative Public Seminars on Seasonal and Foreign labour in the UK Food Industry April / May 2002: <http://www.eti.org.uk/Z/lib/2002/05/ukagric-sem/index.shtml>

The Environment, Food and Rural Affairs Committee Report provided further examples which emerged in evidence from Citizens Advice Bureaux:

- A Citizens Advice Bureau (CAB) in Norfolk reported a case of a group of Portuguese nationals who were being paid £3.00 each for cutting 1,000 daffodils after deductions for accommodation and travel.
- A CAB in Cambridgeshire described workers being housed in partitioned containers with no water supply. The conditions of their contracts included an agreement to repay recruitment costs of up to £100 if they left within six months.
- A CAB in the Midlands described how a woman from the Ukraine had been recruited by a gangmaster who had charged her £600 for documentation which she had never seen. Her wages were less than the minimum wage. Accommodation was provided in portacabins with one kitchen and one toilet between 18 people.
- CABs have been approached by workers who are in fear of their gangmasters. Intimidation is also sometimes less direct: workers fear that they will lose both their jobs and their accommodation if they complain. CABs report that EU nationals, particularly those from Portugal, are told by their gangmaster that they are working illegally even though they have a right of freedom of movement throughout the EU. This creates a culture of fear and a reluctance to seek advice.<sup>10</sup>

In November 2003, responding in particular to the concerns which were raised over workers from Portugal, the DTI, in collaboration with the Foreign Office, Citizens Advice, TUC and Portuguese authorities launched an employment rights advice leaflet aimed at Portuguese people coming to work in the UK.<sup>11</sup>

## **B. General employment rights**

DEFRA publishes a guide for employees on a farm or in a packhouse which highlights the following employment rights:<sup>12</sup>

- agricultural minimum rates of pay
- national minimum wage
- deductions from pay
- ending a worker's employment
- written employment details

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<sup>10</sup> Environment, Food and Rural Affairs Committee; *Gangmasters*; Fourteenth Report of Session 2002–2003: <http://www.parliament.the-stationery-office.co.uk/pa/cm200203/cmselect/cmenvfru/691/691.pdf>

<sup>11</sup> DTI Press Release P/2003/566, *Sutcliffe gives helping hand to exploited workers*, 18 November 2003

<sup>12</sup> DEFRA guide to employee's rights; *Working on a farm or in a packhouse - your rights explained*: <http://www.defra.gov.uk/farm/agwages/employee.pdf>

- written pay details
- employment agencies
- health and safety
- transport
- accommodation
- working time and holidays
- fixed term workers

A similar list appears in the Environment, Food and Rural Affairs Committee Report.<sup>13</sup> Most of these rights apply generally to all workers. The DTI provides various guides to individual employment rights: <http://www.dti.gov.uk/er/individual.htm>

In most cases agricultural workers will have rights which are no different to other areas of employment. However, there are some differences arising out the Agricultural Wages Order which relates primarily to pay and working time.

## **C. Employment rights for agricultural workers**

### ***a. Agricultural Wages Order***

Agricultural workers are covered by the National Minimum Wage (see below). In addition, the Agricultural Wages Board for England and Wales issues an agricultural wages order each year.<sup>14</sup> This contains a number of provisions fixing minimum terms of employment and defines various categories of worker and the rates of pay applicable to each category. These have usually been set at rates above the National Minimum Wage (NMW). In England and Wales the agricultural minimum wage is enforced by the Department of the Environment, Food and Rural Affairs (DEFRA). There are different arrangements for Scotland where the Scottish Agricultural Wages Board performs a similar function.<sup>15</sup> It is a criminal offence for an employer to pay less than the minimum agricultural wage to agricultural workers.

On 7 July 2003 a new Agricultural Wages Order came into force, covering a 15 month period to end September 2004.<sup>16</sup> The minimum rate for an adult Standard Worker was increased from £4.91 per hour to £5.10 per hour with a further increase to £5.15 per hour from 1 October 2003. Total Annual Holiday entitlement was also increased by 1 day. The Scottish Agricultural Wages Board set different rates, applicable from 1 January 2004.<sup>17</sup>

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<sup>13</sup> <http://www.parliament.the-stationery-office.co.uk/pa/cm200203/cmselect/cmenvfru/691/691.pdf>

<sup>14</sup> *Agricultural Wages Act 1948*, section 3

<sup>15</sup> See *Agricultural Wages (Scotland) Act 1949*, section 3

<sup>16</sup> Agricultural Wages Board Press Release 1/03, 6 May 2003; A pdf copy of Order is available via the DEFRA website: <http://www.defra.gov.uk/farm/agwages/awo2003/awo03.pdf>

<sup>17</sup> Scottish Executive notes on agricultural workers wages, 13 October 2003

If the contract of employment states a lower agricultural wage than that set by the Order or the NMW, then that term of the contract is legally void even if the worker has agreed to it. A court will replace that term with another term providing for the current minimum agricultural wage.<sup>18</sup>

Copies of the Agricultural Wages Orders can be obtained from the Secretary to the Agricultural Wages Board for England and Wales or The Agricultural Wages Team, DEFRA, Zone 2 C, Ergon House, Horseferry Road, London SW1P 2AL or one of DEFRA's Regional Service Centres.

There is an Agricultural Wages Helpline on 0845-0000134 as well as a National Minimum Wage helpline on 0845-6000 678 (local call rates). Acas have set up an interactive website to help individuals understand their employment rights, including the National Minimum Wage: <http://www.tiger.gov.uk/>

#### ***b. National Minimum Wage***

The NMW applies to most workers and sets minimum hourly rates of pay. It is intended to benefit business as well by ensuring that companies compete on the basis of quality of the goods and services rather than low prices based mainly on low rates of pay. The rates are set in regulations made by the Secretary for State, with parliamentary approval, based on the recommendations of an independent body – the Low Pay Commission.

The main (adult) rate for workers aged 22 and over is currently:

- £4.50 per hour from 1 October 2003

The development rate for workers aged 18-21 inclusive (which can also apply to workers aged 22 and above who are in their first 6 months of a new job with a new employer and who are receiving accredited training) is currently:

- £3.80 per hour from 1 October 2003

The National Minimum Wage is enforced by the Inland Revenue pursuant to powers of appointment by the Secretary of State contained in the *National Minimum Wage Act 1998*. The Inland Revenue website describes this as follows:

#### **What is the Inland Revenue's involvement with National Minimum Wage?**

The role of the Inland Revenue is to enforce the National Minimum Wage. We do that by responding to all complaints made about employers suspected of not paying the minimum wage and by visiting a sample of employers about whom no

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<sup>18</sup> *Gutsell v Reeve* [1936] 1 KB 272

complaints have been made to check that all employers meet their obligations under National Minimum Wage Law.

#### **How does the Inland Revenue enforce the law?**

There are two key aspects to our approach to enforcement;

- A confidential helpline,
- A network of 16 teams of National Minimum Wage Compliance Officers.

#### **The Confidential Helpline.**

- Located in Longbenton, Newcastle upon Tyne.
- Open from 8am to 6pm Monday to Friday.
- All calls are charged at local rates.
- Experienced call agents.
- Respond to all types of queries and complaints about the National Minimum Wage.

Since 1 April 1999 the helpline has responded to over 320,000 enquiries and handled over 11,000 complaints about non-payment of the minimum wage. The helpline number is 0845 6000 678.

#### **The Compliance Team**

Located across the country, each team comprises of up to 6 compliance officers. There are five key areas to the work of these teams:

- Responding to all complaints from workers and third parties, referred by the helpline, that minimum wage has not been paid.
- Carrying out inspections of employer's records, to check employers are meeting their obligations to pay the minimum wage.
- Helping employers understand their obligations under minimum wage law.
- Securing Pay arrears.
- Regularly presenting cases to employment tribunals on behalf of workers.

Since the introduction of the minimum wage Inland Revenue enforcement officers have identified over £13 million in pay arrears for workers.<sup>19</sup>

The DTI website has a page on the NMW which contains both short and more detailed guides for employers and employees. The employees' guide contains information for employees on what to do if they think that they are not being paid the NMW.<sup>20</sup>

#### ***c. Children in employment***

The Agricultural Gangs Act of 1867 defined a gangmaster as a person "who hires Children, Young Persons, or Women with a view to their being employed in Agricultural Labour on Lands not in his own Occupation". Whilst the employment of children has not

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<sup>19</sup> [http://www.inlandrevenue.gov.uk/nmw/nmw\\_ir\\_and\\_n.htm](http://www.inlandrevenue.gov.uk/nmw/nmw_ir_and_n.htm)

<sup>20</sup> [http://www.dti.gov.uk/er/nmw/nmw\\_w.htm](http://www.dti.gov.uk/er/nmw/nmw_w.htm)



been highlighted as a modern problem relating to gangmasters, the 2003 Agricultural Wages Order sets minimum rates of pay for children of age 15 and under, employed in agriculture and who are classed as standard workers. These changed in October 2003 and are currently £2.58 per hour (£3.87 for overtime) and £100.62 per week. The legal position of children in employment is regulated by a complex net of national laws as well as local bye-laws. The main primary legislation is the *Children and Young Persons Act 1933* (in Scotland the *Children and Young Persons (Scotland) Act 1937*).

#### **d. Working Time Regulations**

For general information about the working time regulations see the DTI website:

[http://www.dti.gov.uk/er/work\\_time\\_regs/index.htm](http://www.dti.gov.uk/er/work_time_regs/index.htm)

The normal provisions regarding holidays are set out in the Working Time Regulations 1998.<sup>21</sup> These are slightly modified for agricultural workers. Whereas the “leave year” normally starts on the anniversary of the date on which the job started, with agricultural workers the leave year “begins on 6 April each year or such other date as may be specified in an agricultural wages order which applies to him”. This also determines the dates on which leave can be taken.<sup>22</sup>

The basic provisions on working time are as follows:

- a limit of an average of 48 hours a week which a worker can be required to work (though workers can choose to work more if they want to).
- a limit of an average of 8 hours work in 24 which night workers can be required to work.
- a right for night workers to receive free health assessments.
- a right to 11 hours rest a day.
- a right to a day off each week.
- a right to an in-work rest break if the working day is longer than six hours.
- a right to four weeks paid leave per year.

The DTI summarise the enforcement provisions as follows:

Enforcement is split between different authorities. The limits and health assessments (if a night worker), are enforced by Health & Safety Executive (HSE), local authority environmental health departments, the Civil Aviation Authority (CAA) and the Vehicle and Operator Services Agency (VOSA). The entitlements to rest and leave are enforced through employment tribunals.

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<sup>21</sup> SI 1998/1833 regulations 13 to 16

<sup>22</sup> *Working Time Regulations 1998* SI No. 1833, schedule 2

If you require further information about the application of the Regulations you should contact ACAS or the HSE enquiry line 08701 545500 or the Environmental Health Department of your local authority. The Employment Tribunals Service can help you with information about making a claim or about Tribunal procedures.<sup>23</sup>

## **D. Employment agencies and temporary workers**

### **a. *Employment Agencies Act 1973***

The *Employment Agencies Act 1973* is still in force as the primary legislation governing employment of workers through an agency. The Act distinguishes between “Employment Businesses” and “Employment Agencies”.

“Employment Agencies” simply introduce a worker to an employer. In the case of an “Employment Business”, the worker is legally employed by the agency but is temporarily seconded to a “client employer”.

There are no special employment law provisions covering (or defining) “temporary” staff, whether provided by an “employment agency” or by an “employment business”. In UK law the applicability of employment law rights to a temporary employee turns on normal principles, such as whether they are technically an employee and if so whether they have completed any required continuous period of employment necessary to assert the right being claimed. For example, an employee who has completed one year in employment may acquire the statutory right not to be unfairly dismissed but not be entitled to statutory redundancy pay, which has a qualifying period of two years. The following are examples of employment rights for which no qualification period of service is required:

- Not to be discriminated against on grounds of sex, race or disability;
- Rights under the *Equal Pay Act 1970*;
- Statutory sick pay;
- The right to complain to a Tribunal if an employer takes “action short of dismissal” against an employee for certain specified purposes connected with trade union membership or activity;<sup>24</sup>
- ordinary maternity leave
- The right to claim for unfair dismissal for a reason which is “automatically” unfair under section 108(3) *Employment Rights Act 1996* (ERA) (e.g. maternity, public interest disclosure etc.)
- The right to an itemised pay statement.

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<sup>23</sup> [http://www.dti.gov.uk/er/work\\_time\\_regs/index.htm](http://www.dti.gov.uk/er/work_time_regs/index.htm)

<sup>24</sup> *TULRCA 1992*, s.146

The following are examples of rights which would apply to an employee who had completed up to a year's continuous employment:

- Additional maternity leave (26 weeks at the beginning of the 14th week before her expected week of childbirth);
- The right to a written statement of employment terms or changes to employment terms (1 month);
- The right to a minimum level of “fall back” pay in respect of any normal working day for which the employer provides no work in the circumstances specified in ERA s.28 to s.35. This fall back pay is called a “guarantee payment” (1 month).

The 1998 *Working Time Regulations* which implemented the European Working Time Directive specifically apply to agency staff. They include a special definition of agency worker (see regulation 36). The provisions concerning minimum paid holiday and obligatory rest breaks as well as the maximum working hours provisions apply to agency workers. The NMW also applies to agency workers.

Employment agencies are prohibited by section 6 of the *Employment Agencies Act 1973*, from charging fees to workers for finding them jobs. Contravention of this section is a criminal offence carrying a fine of up to £5,000. Further, under the Act, an employment tribunal can ban persons from running an employment agency for up to ten years for misconduct or any other sufficient reason.

The *Conduct of Employment Agencies and Employment Businesses Regulations 2003 SI No. 3319* were made on 17 December 2003 and come into force mainly on 6 April 2004, with some parts coming in on 6 July 2004. These are intended to provide for tighter control of employment agencies and improved protection for staff employed by or through an employment agency, including increased powers for the employment agency standards inspectorate.

***b. The draft European directive on temporary workers***

The draft EC directive on “working conditions for temporary workers”, was issued in March 2002 (under a different name) and then amended, approved and renamed by the European Parliament on 28 November 2002.<sup>25</sup> The basic purpose of the directive is to ensure that “temporary agency workers” have the same basic employment law rights throughout the EC, that they are not discriminated against because they are temporary workers and to ensure that agencies who supply them are regarded as employers. If adopted, the directive will give “temporary agency workers” as defined the same rights and pay as established full-time employees.

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<sup>25</sup> *Proposal for a directive of the European Parliament and Council on working conditions for temporary workers* (COM(2002)149):  
[http://europa.eu.int/comm/employment\\_social/labour\\_law/docs/com2002\\_701\\_en.pdf](http://europa.eu.int/comm/employment_social/labour_law/docs/com2002_701_en.pdf)

This directive has had its first reading in the European Parliament, but has yet to have its other stages in either Parliament or Council. Assuming the directive is eventually adopted, it would not – as it stands at present – have to be implemented in Member States for a further two years.

Those who support the directive hoped that it would be adopted at a Council of Ministers meeting in Brussels on 3 June 2003 but there were too many disagreements and the directive was not then adopted. It is unlikely to be adopted before the second half of 2004. This is because Italy and Ireland, who hold the EC presidency until then, appear to be either apathetic or against the proposals as they stand. The UK Government has expressed reservations about the directive in submissions by the DTI.<sup>26</sup>

### *c. Enforcement*

The DTI are the appointed enforcement agency and have a webpage on employment agency standards which explains:<sup>27</sup>

Employment agencies in England, Scotland and Wales must comply with the Employment Agencies Act 1973 and regulations. For a summary of the Act and regulations, see *Employment Agencies Act 1973: Guidance on the Act and regulations (PL971)*.<sup>28</sup>

Employment Agency Standards Inspectorate is part of the DTI. The Inspectorate carries out routine inspections of agencies and investigates complaints about agency conduct. **The Inspectorate operates an enquiry line 0845 955 5105 (Monday - Friday 9:30 - 16:30).**

Not sure if you should complain about an agency? As well as the guidance mentioned above, you can check our Frequently asked questions for agency workers.<sup>29</sup> If you have more questions, please phone the enquiry line. Then if you want to make a complaint, you can either do it by phone or fill in our Employment agency complaint form.<sup>30</sup>

The DTI leaflet entitled *Employment Agencies Act 1973: Guidance on the Act and regulations (PL971)* gives detailed guidance on enforcement.<sup>31</sup>

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<sup>26</sup> Explanatory Memorandum on European Community Legislation; Amended Proposal for a Directive on Temporary Work [15098/02 COM(02)701]. Submitted by the Department of Trade and Industry on 10 January 2003.

<sup>27</sup> DTI page on Employment Agency Standards: <http://www.dti.gov.uk/er/agency.htm>

<sup>28</sup> Guidance leaflet: <http://www.dti.gov.uk/er/agency/regs-pl971.htm>

<sup>29</sup> Frequently asked questions: [http://www.dti.gov.uk/er/agency/faq\\_workers.htm](http://www.dti.gov.uk/er/agency/faq_workers.htm)

<sup>30</sup> Online Complaint Form: <http://www.dti.gov.uk/er/agency/complaint.htm>

<sup>31</sup> Guidance leaflet: <http://www.dti.gov.uk/er/agency/regs-pl971.htm>

### III The *Gangmaster (Licensing) Bill 2003/4*

#### A. What the *Gangmaster (Licensing) Bill* would do

Jim Sheridan won a place in the ballot of Private Members' Bills for his *Gangmaster (Licensing) Bill 2003/04*, which is to have a Second Reading debate on 27 February 2004. In the *House Magazine*, he described his intention:

If, like me, you thought the term “gangmaster” belonged to a bygone era, then, like me, you would be wrong. Gangmasters have been part and parcel of the labour infrastructure of agriculture since the 1850s, and are as active – and necessary – today as they ever were. Sadly, though, far too many of them prefer employment practices that do belong to darker days. This breed does neither modern agriculture nor social justice any service – something I am determined to address through my Gangmaster Licensing Bill.

There are probably some 3000 gangmasters operating across the UK, employing an estimated 60,000 workers, some from overseas but including many domestic workers, too. It is hard to be exact because the authorities have no way of knowing for sure how many gangmasters are out there – something we have the 90s fashion for deregulation to thank for. But now farmers, the food industry, retailers and workers agree that the voluntary approach is failing workers and legitimate employers alike.

The case for action is overwhelming. Evidence to the Environment Select Committee showed that threats, intimidation and abuses of employment law are routine. We heard of workers employed to cut one thousand flowers who were paid only £3. Then there was the worker who became ill but was denied statutory sick pay. He was still charged rent on his gangmaster-supplied accommodation so he ended up *owing* his employer money. Also, the 27 workers forced to sleep in one house – charged for the privilege, of course. Paid a pittance, worked to the bone – and, in one tragic case that came to light last week, to death – and subjected to abuse. These workers really do inhabit a twilight world.

My Bill would take essential steps towards tackling these abuses by requiring every gangmaster to operate within the law, to demonstrate his legality by applying for a licence and to retain it by abiding by our laws. It would require Government to legislate in much the same way as it did for the providers of nursing staff and operators in the private security industry. No more then could gangmasters bypass our labour laws or evade our tax system. no more could they operate in the shadows and force their employees to live in the twilight.

Never before have I come across the broad consensus of support that I now witness for this common sense measure. From the TUC to the NFU, from community groups to retailers, and across the House it is being concluded that

our tax laws favour only the unscrupulous. It is my strongest hope that the Government will also decide to become part of this coalition for change.<sup>32</sup>

## **B. The Government position on the Bill**

In a statement following the Morecambe Bay tragedy, the Government announced its support for the objectives of the *Gangmasters (Registration) Bill*, but remained undecided on the merits of a statutory licensing system. Alun Michael explained:

The Gangmaster (Licensing) Bill, a Private Member's Bill, will be presented to the House by my hon. Friend the Member for West Renfrewshire (Jim Sheridan) for Second Reading on 27 February. The Bill seeks to curb the exploitative activities of gangmasters operating in agriculture by introducing a statutory licensing scheme. The Government fully support the objectives of the Bill. Like hon. Members in all parts of the House, the Government wish to see an end to the misery and exploitation that unscrupulous gangmasters operating outside the law can cause. The Government's normal approach is to consider alternatives to statutory regulation first, and we have been working very closely with the Ethical Trading Initiative to establish whether an industry-led accreditation scheme would be effective in curbing the exploitative activities of certain gangmasters. That work is continuing.

In this case, we appear to be dealing with criminal gangs. Such people will take no notice of a non-statutory solution. As my hon. Friend the Member for West Renfrewshire said on the radio this morning, we can never legislate for people who are determined to undermine any kind of laws. The Government have not ruled out legislation, although we have yet to reach a final conclusion on the merits of a statutory licensing scheme. However, I recognise the depth of support that he has for his Bill, and we are carefully considering it with colleagues in other Departments. If a licensing scheme is introduced, the work done in association with the Ethical Trading Initiative will provide a valuable contribution to any statutory licensing scheme that may be introduced.

Gangmasters who operate outside the law cannot be allowed to continue to put workers' lives at risk. The Government will therefore ensure that the full force of the law is brought to bear on those committing these crimes.<sup>33</sup>

## **C. The Bill**

The Explanatory Notes list the main effects of the Bill:

- to define a “gangmaster” with reference to “licensable conduct”;

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<sup>32</sup> Jim Sheridan, “Gangmaster (Licensing) Bill”, *House Magazine*, 26 January 2004

<sup>33</sup> HC Deb 9 February 2004 c 1120

- to require gangmasters to obtain a licence and be entered onto a public register;
- to make it a criminal offence for a gangmaster to engage in licensable conduct without a licence or to breach the conditions of the licence, and, for this purpose to make it compulsory conditions of each licence that:
  - ❖ a gangmaster will not withhold personal documents from gang workers;
  - ❖ a gangmaster will provide personal identity to their agents/workers;
  - ❖ a gangmaster (or their worker or agent) will show their licence or identity to users of gangmasters on demand;
  - ❖ a gangmaster will keep records relating to his activities as a gangmaster for a period of 5 years from the date of that conduct;
- to make it a criminal offence for users of gangmasters to engage an unlicensed gangmaster (subject to a defence);
- to require the Secretary of State to set up a scheme of licensing and enforcement.

The Bill would cover “agricultural work” broadly defined. It would include “the production of any consumable produce” where the definition of “consumable produce” includes livestock (including fish and shellfish). Therefore the Bill would have covered the Chinese cockle pickers who drowned in Morecambe Bay. It could not, of course, have covered the broader aspects of the tragedy, such as the illegal immigration or any intimidation that may have been involved. The Bill would mean that anyone engaging the services of an unlicensed gangmaster would be committing an offence. In the Morecambe Bay case, the gangmaster apparently sold at least some of the cockles directly to a buyer. It is far from clear what, if any, offence was being committed by the buyer, but arrests have been made and further details will presumably emerge.<sup>34</sup> A major supermarket might avoid buying produce without knowing about the conditions under which it was obtained, because of the Ethical Trading Initiative, described in section VIII of this paper. However, there would no doubt be plenty of other outlets, such as small shops, caterers or street markets.

#### **IV Doubts about compulsory registration**

The Government support for the Bill marks a change in policy. Neither the Environment Committee nor the Government in its response in December 2003 favoured compulsory registration for gangmasters. They did not have any particular objection to a statutory registration scheme but they did not think that it would solve the problem. The Committee recommendation and Government response are given in full:

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<sup>34</sup> “Seize gangmasters’ assets after cockle deaths, says MP”, *Times*, 14 February 2004

**Recommendation 10**

**We are not convinced that a statutory registration scheme offers a stand-alone solution to the problem of illegal gangmasters. Certainly, without concerted action to remedy the shortcomings in enforcement that we have highlighted in this Report, a statutory registration scheme, introduced as a single policy response, will solve nothing. It is difficult to imagine that those individuals engaged in the types of illegal activity about which we received evidence would be affected by a statutory registration scheme unless it were rigorously enforced. A statutory registration scheme may prove to be necessary, but it will only be effective if it is introduced as part of a wide range of policy initiatives designed to confront the difficulties associated with the supply of temporary labour to the agriculture and horticulture industries.**

32 The Government notes that the Committee has concluded that a statutory registration scheme on its own would not be a solution to the problems associated with gangmasters, but that such a scheme may prove to be necessary as part of a range of policy responses. This is consistent with the Government's own thinking. The Defra/ETI gangmaster best practice project is intended to lead to the setting up of an independently audited accreditation scheme for gangmasters. This should of itself contribute to driving up standards in the industry. But whether it will be effective in helping to tackle the widespread abuses about which the Committee heard evidence will depend on whether a sufficient 'critical mass' of gangmasters and labour providers are prepared to work with the accreditation scheme to make it realistic for supermarkets to stipulate that their suppliers use only accredited labour. The trial of the draft gangmaster code of practice planned for the next few months will give an initial indication of whether there is such a critical mass. In addition, as indicated above, all relevant Departments are considering the scope for better targeted enforcement. However, the Government recognises that if this voluntary accreditation by the industry with the better targeted enforcement referred to above prove not to be sufficiently effective, we may need to consider the possibility of further legislation or registration.<sup>35</sup>

## **V Supporters of Compulsory Registration**

### **A. Mark Simmonds' 2003 Bill**

Mark Simmonds introduced a Ten Minute Rule Bill, the *Licensing and Registration of Gangmasters Bill 2002/03*, in September 2003. He first stressed that he did not want to make the gangmaster system illegal, and emphasised its importance, particularly for agriculture and horticulture. This was a multi-million pound business, and some criminal gangs had moved into the casual labour market in the UK to exploit the legislative loophole. Sub-contracting made the situation harder to control. There was an atmosphere of intimidation surrounding illegal ganging.

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<sup>35</sup> Environment Committee, Gangmasters: Government Reply to the Committee's Report, 17 December 2003, HC 122 2003-04



Mark Simmonds then argued that the Government had failed to tackle the problem effectively, and did not even know the numbers involved:

The fundamental step in combating the problem is to establish a legislative framework to introduce a compulsory code of practice. All gangmasters and subcontractors must abide by that code to obtain a licence and to be allowed to organise casual gang labour. Registration must be kept simple and unbureaucratic, unlike the existing voluntary codes, which are clearly not working. If gangmasters fail to comply with the legal obligations, they must be removed from the register and not be allowed to operate as gangmasters. An annual levy would be charged to make the scheme self-financing.

Any scheme must take into account the importance of the need to maintain flexibility in the labour market and must not add further to the burden on the agriculture and horticulture industries. Such schemes have existed before—for example, under the Agricultural Gangs Act 1867. In the 1940s, there was a licensing scheme administered by magistrates. In 1973, a scheme worked reasonably successfully, alongside the White Paper on employment.

Such a self-financing legislative scheme is supported by supermarkets, producers, farmers, packers, the National Farmers Union, the Fresh Produce Consortium, the trade union movement, legitimate gangmasters and many hon. Members. In conclusion, it is not acceptable to have many thousands of vulnerable legal and illegal workers being transported across the country and being exploited. It must stop. It is essential that we must encourage the legitimate supply of labour to the detriment of the illegal and illegitimate.<sup>36</sup>

The Bill made no progress.

## **B. The National Farmers Union**

The National Farmers Union, in its response to the Select Committee report on Gangmasters in September 2003, regretted that it did not recommend a registration scheme as part of a solution. NFU Vice President Michael Paske said:

Although we welcome the contents of the report, we do feel the committee has missed an opportunity and the recommendations do not go far enough. The NFU will continue to work through the Ethical Trading Initiative to tackle problems associated with gang labour and most importantly to achieve a properly resourced and policed registration scheme.<sup>37</sup>

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<sup>36</sup> HC Deb 10 September 2003 cc 331-4

<sup>37</sup> NFU Press Notice, *NFU welcomes EFRA report on gangmasters*, 18 September 2003

## **C. The Transport and General Workers Union campaign**

The Transport and General Workers Union supports compulsory registration and the Bill. Its argument rests on the analogy of regulation of the private security industry:

### **Licensing works**

The T&G believes that for the exploitation of gang labour by unscrupulous gangmasters to be ended, all gangmasters must be brought within the UK's framework of minimum employment rights. To achieve this there has to be an effective mechanism for monitoring gangmasters to check that they are abiding by their statutory obligations. That means a system of registration and licensing.

The government has itself recognised the positive benefits of registration and licensing in industries ranging from private car hire to private housing. One notable example of the government's support for the concept of registration and licensing can be found in the private security industry, an industry which, in many ways, experienced problems that closely resemble those currently characterising the activities of gangmasters.

In 1999, the government concluded that the absence of mandatory registration and licensing in the security industry made it impossible to accurately determine the number of firms operating, whether they were fit to operate or the number of people they employed. Just as with gangmasters today, the Government simply had no way of establishing who was breaking the law or who was upholding it.

As the Home Office stated in its consultation document on the private security industry:

"Despite its importance there is no regulation to control those who work in the industry and no standards to which companies have to adhere. Reputable companies enforce effective standards and self-regulation but less scrupulous companies are able to undermine their best efforts. Voluntary regulation cannot touch this situation. The public has a right to be protected from the rogues who exploit the current unenforceable system and to expect certain standards from the companies they choose to provide the services with which they come into contact."

The T&G would argue that this same logic applies to those gangmasters who are currently operating beyond the reach of the law. The result of the Government's deliberations concerning rogue security operators was the Private Security Industry Act 2001 and the introduction of a statutory registration and licensing scheme in the industry. This is a clear demonstration that the Government has accepted the principle that registration, licensing and enforcement need not be an expensive regulatory burden. Indeed, regulation can protect the rights of workers, safeguard the public and also enhance the reputation of an industry...

### **A new model**

The T&G, along with the National Farmers Union, Fresh Produce Consortium and Farmforce, have all called for the reintroduction of a statutory licensing

system. The T&G's proposed model for a Registration & Licensing Scheme is as follows:

- In order to operate legally, all gangmasters would require a "Gangmasters' Operating Licence". They would be required to produce this licence to all those to whom they were working for or providing labour to. A fee would be charged for the licence.
- Possession of a licence would also result in the inclusion of a gangmaster on a "Gangmasters' Register". In effect this is an approved list of gangmasters open for public inspection.
- A licence would be valid for two years. Its renewal would be granted providing the gangmaster had not been found to have been in breach of any of the conditions and duties imposed by the licence.
- In addition to an inspection upon application for a licence, once a licence has been granted gangmasters should be subjected to a minimum of two compliance inspections during the period of licence validity.

#### **Suggested licence costs**

The cost of the licence should be set at a sufficient level to make the scheme self-funding. Any decision on the actual amount of the fees to be levied would be a matter for the Secretary of State and the chosen enforcement agency. However, the T&G notes that in 1973, a licence cost £400 per year. Subject to inflation during the intervening decades, this figure could be used as the benchmark for a contemporary fee.<sup>38</sup>

## **VI The 1973 system of licensing employment agencies**

### **A. Registration under the 1973 Act**

Employment agencies and some gangmasters had to be registered under the *Employment Agencies Act 1973*. Opinions vary as to whether that registration was helpful in curbing abuse. On the one hand, a memorandum submitted to the Environment Committee in 2003 from a legal gangmaster, *Farmforce*, was positive about it:

Originally, a very adequate licensing system was introduced in 1973 in line with the white paper on employment. The legislation required all gangmasters/agencies to be licensed. The cost was £400 per year, which involved compliance with the Employment Agencies and Employment Business regulations (white paper 1976 No 715). Any agency applying for a licence was obliged to publish its application in the local newspaper, giving the opportunity for persons with any grievances to contact the Department of Employment (who were responsible for the licensing) to provide them with relevant information.

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<sup>38</sup> <http://www.tgwu.org.uk/Templates/Campaign.asp?Action=Display&NodeID=89606&int1stParentNodeID=42437&int2ndParentNodeID=42437>

Under this scheme the department of employment made two visits a year to the address of the agency/gangmaster to check all relevant records, applications forms and pay deduction details were being correctly administered.

Unfortunately, the government of the day decided to scrap the scheme in 1994. I can only surmise this was carried out by the change of legislation in the EU, making room for the development of machinery rings, which included local casual labour supplies.

Prior to licensing, gang labour was completely out of control and in some cases very violent. The police usually accompanied inspections in areas such as Lincolnshire and Norfolk.

The implementation of the licensing procedure was fairly successful, with the revenue from the license coverings operational costs to a large extent. It also gave the necessary powers to Tax, NI, VAT & Department of Employment to implement legislation, allowing the imposition of heavy fines to those who breached the regulations.

It also gave a vehicle to employees to voice and complaints without retaliation by the agency/gangmaster.<sup>39</sup>

However, not all gangmasters were covered, as the following PQ in 1993 explains:

**Mr. Redmond :** To ask the Secretary of State for Employment whether agricultural labour gangmasters are required to register as employment agencies ; and how many gangmasters are registered in Lincolnshire, Cambridgeshire and Norfolk.

**Mr. Michael Forsyth :** Whether individual agricultural gangmasters are required to be licensed under the Employment Agencies Act 1973 depends upon their method of operation. If the hirer of workers exercises the control and supervision of workers hired out by a gangmaster, the gangmaster should be licensed. If the gangmaster retains control and supervision of the workers, his or her activities are those of a subcontractor and are outside the scope of the Act. There are currently two licensed gangmasters in Lincolnshire, five in Cambridgeshire and 17 in Norfolk.<sup>40</sup>

At the time, neither those pressing for registration of gangmasters nor those opposed to it considered that the *Employment Agencies Act 1973* solved the problem. Joan Maynard raised the issue in an adjournment debate in 1983, complaining that there was widespread abuse of agricultural wages board orders and problems because of uninsured workers. She continued:

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<sup>39</sup> Environment, Food and Rural Affairs Committee, *Gangmasters*, September 2003, HC 2002-03, Memorandum submitted by Farmforce

<sup>40</sup> HC Deb 30 November 1993 c515W

Farm workers in South Lincolnshire, Norfolk and the Cambridge Fens would like to see the reintroduction of licensing of gangmasters. Let me spell out what we think the conditions for a licence should be. We think that the licence should be obtained from magistrates and be valid for six months. Notification of an application for a licence should be made public to the relevant bodies – the Inland Revenue, the Department of Health and Social Security and the relevant trade unions, the National Farmers Union and the agricultural trades group. There must be a substantial licensing fee to deter fly by-night boys from becoming gangmasters. We think there should be certain sanctions on these conditions. If within a three-year period any gangmaster was caught three times infringing the agricultural wages board orders or the employment legislation, he should be debarred from holding a licence for three years. A contract laying out the terms, conditions and rates of remuneration would have to be presented to the employee on the date that he or she started employment. The contract would also have to be available at the time of an application for a licence.<sup>41</sup>

The Under-Secretary for Employment, John Gummer, rejected the idea of registration of gangmasters, largely because he considered that there was little abuse:

I am sure that there are cases when gangmasters behave in a way that the hon. lady or I would not find acceptable, but I do not think that we solve these problems by blowing them up out of proportion and suggesting that they are much more widespread than we know them to be. It is an issue which, in terms of pressure from localities, is largely centred in Lincolnshire, particularly in the Holland with Boston area. We have looked carefully at the position in our jobcentres and unemployment benefit offices. The Department of Health and Social Security has also looked carefully at its areas. There is no evidence of the kind of widespread abuse that the hon. lady has put forward...<sup>42</sup>

Pressure continued for a registration system specific to gangmasters. In 1987, Sir Richard Body presented a Bill to require compulsory registration for gangmasters, but it did not receive a second reading.

Clement Freud raised the issue in an adjournment debate in March 1987. He regretted the repeal of the 1867 Act, complaining that the odd, dishonest gangmaster failed to insure the workers, neglected to pass on to the Department of Health and Social Security the national insurance contributions, or provide holiday pay and other benefits, although the money had been deducted from payments to the staff. He added:

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<sup>41</sup> HC Deb 18 February 1987 c 641

<sup>42</sup> HC Deb 18 February 1983 c 643

There are only a small number of dishonest gangmasters, but the great danger is that this small number undercuts the honourable gangmasters and is allowed to flourish.<sup>43</sup>

The Under-Secretary of State for Employment (John Lee) argued against registration of gangmasters:

I have to say straight away that I remain to be convinced that the reintroduction of a system of licensing or registration of gangmasters would serve any useful purpose today. It could be illogical to require one small group of persons supplying subcontracted labour to be licensed and not all the others in industries such as, say, building or fish processing. Licensing a gangmaster, or requiring him to be registered, would not necessarily improve the terms and conditions of the workers he eventually hired, even if the licensing body was obliged to take into account the terms of employment which he intended to offer before granting them a licence.<sup>44</sup>

## **B. Ending of Registration under the 1973 Act**

The licensing requirement in the 1973 Act was removed by s.35 and Schedule 10 of the *Deregulation and Contracting Out Act 1994*. Sections 1 to 3 of the *1973 Employment Agencies Act 1973*, covering licences, were repealed. Instead new Section 3A allowed an industrial tribunal, on application by the Secretary of State, by order to prohibit a person from carrying on an employment agency business.

The issue of gangmasters was raised in standing committee by Richard Burden. Neil Hamilton, then Under-Secretary of State at the DTI, explained why he considered that removing the registration requirement would not make things worse:

**Mr. Hamilton:** The great difference between the circumstances described by the hon. Gentleman and what we are discussing is that we are talking about a panoply of offences that will remain in place and give rise to the full rigour of the law if they are committed. For example, if someone who claims to be an agent with access to employment opportunities asks a client for money to get him or her a job but has to contact with employers, the law relating to fraud, obtaining money by deception and so on will apply with even more serious penalties than those that are available under the Act and regulations...[T]he Act contains wide provisions that enable us to take action against those who are guilty of offences or undesirable or anti-social conduct. The word that I would fasten on in that context is “misconduct”, and that was specifically chosen to have a wide ambit. So industrial tribunals can take a wide range of wrongful actions into account in

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<sup>43</sup> HC Deb 16 March 1987 c 791

<sup>44</sup> HC Deb 16 March 1987 c 793

deciding whether to grant an application to prohibit a particular individual agency or operator from operating...If resources are to be freed by abolishing the licensing system, it would be far better to devote those to the true task of regulation, which is to track down wrongdoers and penalise them. The licensing system that has been in place for 20 years does not do that, whereas the prohibition system that we shall put in place will do so.<sup>45</sup>

## VII Operation Gangmaster

Operation Gangmaster is the main Government reaction over the past five years to the gangmaster issue. The operation, co-ordinated between several Government Departments and agencies, was heavily criticised by the Select Committee, and strongly defended by the Government in its response. That response explains what the Government has covered in Operation Gangmaster:

### **Recommendation 8 and 9**

**We are appalled by the lack of priority given to, and political accountability for, what is supposed to be the Government's co-ordinated response to illegal activity by gangmasters. Operation Gangmaster appears to be little more than an umbrella term for a few local enforcement operations in which the various agencies have exchanged information. Five years after it was established Operation Gangmaster has had no significant resources allocated to it, has no targets and no Minister to take overall responsibility for its activities. Nobody could give us a comprehensive picture of what Operation Gangmaster does, how much it has spent and what it has achieved. Far from being a "good example of joint action by several Government agencies" we conclude that Operation Gangmaster remains a woefully inadequate response to the complex enforcement issues arising from the illegal activities of gangmasters.**

**We accept that Operation Gangmaster has facilitated some joint working between officials of different agencies. However, it appears to us that Operation Gangmaster serves as a convenient reference point for Ministers to give the impression that the Government is doing far more about dealing with the problems associated with gangmasters than is the case. We recommend that a Defra Minister take overall responsibility for Operation Gangmaster. The Operation should be given clear aims and objectives and it should report regularly on these to the responsible Minister. Defra's annual report should include a section on the Operation's work and achievements. Data should be collected from the different agencies involved enabling a comprehensive record of activities maintained and lessons learned. Operation Gangmaster should have a single budget derived from the budgets of each of the relevant Government agencies and Departments.**

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<sup>45</sup> SC Deb 22 March 1994 c715

26. The Government considers that some of this criticism of Operation Gangmaster is misleading. It is misleading to say that Operation Gangmaster in its current form has been running for five years. It is misleading to imply it is the only attack on the problem from enforcement agencies. It is misleading to say that it has only operated as a reference point without real effect. Hence some of the solutions are also misconceived, in particular the recommendation that Operation Gangmaster should have a centralised budget and staffing supervised by Defra.

27. Started as a MAFF pilot initiative in parts of Lincolnshire and East Anglia focussed on the agriculture sector, Operation Gangmaster was originally intended to be a forum in which interested agencies could discuss areas of mutual concern and exchange information and intelligence - in other words an umbrella organisation. The Government has acknowledged that much of this activity effectively ceased during the 2001 outbreak of foot and mouth disease. Since the Department for Work and Pensions took over coordination of the operation in 2002/03, it has been developed and now plans operations targeted at illegal activity by gangmasters across the country where a coordinated approach can add value. Operation Gangmaster does not seek to subsume compliance activities which are better coordinated by the individual Departments. Currently there are 10 operations active under the Operation Gangmaster umbrella, more than at any time in the past. For obvious reasons, the Government cannot disclose details of operations underway or in the pipeline. The Government is keen to share with the Committee the results of all these operations once they are available, as we did in relation to "Operation Shark" in the memorandum submitted to the Committee. However, where such operations involve prosecutions it can be up to two year after the initial enforcement action before full results are available.

28. The Government notes the committee's comments on Operation Gangmaster. The Operation has indeed facilitated joint working and in that sense has been a qualified success. As noted in the introduction to this response, many of the illegal activities of gangmasters fall within the wider informal economy. The Government approach to tackling the problems associated with the informal economy is driven by a report on the subject, by Lord Grabiner, which was published in March 2000. Operation Gangmaster needs to be viewed within this context and not in isolation.

29. There is a considerable amount of enforcement action by individual agencies in relation to the illegal activities of gangmasters, and indeed in relation to the informal economy generally. In addition to Operation Gangmaster each department conducts routine compliance and enforcement activities impacting upon gangmasters, which contribute to individual PSA targets. For example, in October 2003 the Home Office Immigration Service conducted its own operation to tackle gangmasters supplying illegal workers to a flower farm in West Sussex. As a result of that operation 45 illegal workers were detected, (nearly all of whom have already been removed from the UK); one person was charged and 4 others have been bailed pending further enquiries. In addition, over £34,000 was seized under the Proceeds of Crime Act as the money had been linked to organised crime. The Government recognises however that clearly defined outcomes for



Operation Gangmaster are required. Departments are currently analysing how a target regime encompassing all the main issues involved can be best applied to Operation Gangmaster. Further to this DWP are currently planning an evaluation of Operation Gangmaster.

30. The Government accepts the need to clarify responsibilities more clearly in the area of Gangmaster operations and more widely across the informal economy. As noted in response to Points 16 and 17, a cross-governmental group of officials, chaired by DEFRA, is reporting to the Minister for Food and Farming on co-ordination of all enforcement and policy developments targeted at agricultural gangmasters. Beyond this the government further accepts that Operation Gangmaster requires more direct management. Given that Operation Gangmaster is essentially an enforcement function and given that Defra's enforcement powers and resources relate to one small area - agricultural wages - and given that the problem extends beyond the area of agriculture, it would not be appropriate for a DEFRA Minister to hold responsibility for operations conducted under its banner. As the secretariat function is currently led by DWP it would seem appropriate that a DWP Minister leads specifically on Operation Gangmaster. Individual departmental ministers will continue to be responsible for routine enforcement activity by their agencies in relation to illegal activities of gangmasters. However, all the Departments involved have agreed to consider the scope for stepping up and better targeting such activity. Operation Gangmaster will continue to report to the Informal Economy Steering Group of senior officials. As indicated above, that is the correct context for its work. But the Informal Economy Steering Group will make regular reports on its activities and results to all responsible Ministers and each department will make a detailed report on their part in those activities to their own Minister.

31. We accept that each part of Government will need to ensure that sufficient resources are deployed to meet the risks posed by the gangmaster sector. But a central ring fenced budget could reduce flexibility and significantly hamper Government ability to move resource to meet new risks as they develop.

A PQ in February 2004 gives an update on progress:

**Mr. Luff:** The Minister will know that there is concern that Operation Gangmaster is not an effective mechanism to deal with the activities of rogue gangmasters. Could he tell the House whether the Government intend to support the Gangmasters (Licensing) Bill, which is due for its Second Reading on Friday 27 February, or do they prefer more effective enforcement of the current regulatory regime? If it is the latter, they must put more effort into doing so.

**Alun Michael:** Results are coming out of the work. For example, the Department for Work and Pensions identified 235 overpayments and 1,023 adjustments to benefit worth £405,000, securing 138 sanctions and prosecutions. Figures show that the Inland Revenue's success in relation to unpaid tax and national insurance is worth £4.3 million. Steps are being taken that are producing results. However, I recognise hon. Members' interest in taking further measures to deal with

gangmasters, and we are carefully considering, with colleagues in other Departments, the private Member's Bill to which the hon. Gentleman referred.<sup>46</sup>

## VIII The Ethical Trading Initiative

The Ethical Trading Initiative (ETI) is outlined in its dedicated website:

The ETI is an alliance of companies, non-governmental organisations (NGOs), and trade union organisations committed to working together to identify and promote ethical trade - good practice in the implementation of a code of conduct for good labour standards (labor standards), including the monitoring and independent verification of the observance of ethics code provisions, as standards for ethical sourcing.

Members, including multinational companies (multinational corporations) or transnational companies (transnational corporations) are committed to business ethics and corporate responsibility, promotion of worker rights and human rights in general. In employment, ethical business includes working towards the ending of child labour (child labor), forced labour (forced labor), and sweatshops, looking at health and safety, labour conditions (labour conditions) and labour rights (labour rights).<sup>47</sup>

The ETI has brought together the various stakeholders and established a gangmaster working group in September 2003. Groups represented include the major supermarkets, the Trade Union Conference, the National Farmers Union and the Fresh Produce Consortium. The group works closely with the Government. Defra seconded an official to work with the group to define a code of practice for gangmasters and a system for its independent verification. The ETI website explains:

The code consists of a set of minimum employment standards as well as good practice to strive for. We are developing tools (e.g. checklists, a management database, documents and management tools) to help responsible labour providers to implement these standards. We are also defining the procedures for auditors who will assess such standards in the workplace. If trials of this system are successful, we believe it could be the basis for a registration scheme that could also be relevant to other industries.

Importantly, none of the participating organisations believe that a code of practice or even a robust licensing and registration system will solve all the problems associated with the employment of temporary labour in the sector. We do believe such a scheme could greatly assist companies to exercise their responsibilities - to promote compliance with the law in co-operation with the

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<sup>46</sup> HC Deb 5 February 2004 cc 899-900

<sup>47</sup> <http://www.ethicaltrade.org/>

statutory enforcement agencies. A licensing and registration scheme is not a substitute for the role of responsible government - to enforce the law.<sup>48</sup>

## IX Response from Political parties

### A. The Conservative Party

Following the statement on the Morecambe Bay tragedy, James Paice, for the Conservative Party, criticised Government inaction over gangmasters and over illegal immigration, but without commenting on the merits of a statutory licensing system.

**Mr. James Paice (South-East Cambridgeshire) (Con):** ...Many people will be concerned by the Minister's words. Is it not the truth that the tragedy sadly highlights the failure of the Government's policy on illegal working and on immigration and asylum, and their failure to fulfil their own commitments to combat unscrupulous gangmasters and remove illegal immigrants? Those of us who represent East Anglian constituencies know full well the role of good gangmasters in the food industry. The majority are fully legitimate, look after their staff and are used by responsible farmers and growers. But there is ample evidence—there has been for some time—that perhaps up to 1,000 are not so scrupulous.

Last year's Select Committee report, to which the Minister referred, stated:

"It appears to us that Operation Gangmaster serves as a convenient reference point for Ministers to give the impression that the Government is doing far more about dealing with the problems associated with gangmasters than is the case."

That was partly based on the statement of Lord Whitty in evidence to the Committee, when he said:

"We do not have a sufficiently comprehensive view of the situation."

If that is the case, why not?...

Last year, the Minister for Citizenship and Immigration is reported to have said:

"The Government is cracking down on illegal working and making good progress in removing increasing numbers of immigration offenders from the UK."

Can the Minister tell us how many have been removed?

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<sup>48</sup> <http://www.ethicaltrade.org/Z/actvts/exproj/ukagr/index.shtml>

In the case of this tragedy, it is reported that nine of the survivors were asylum seekers and five were unknown to the authorities. How was it that the Government did not know where those asylum seekers were? What happened to the tracking systems that the Government were going to introduce? Do the Government agree with the reported remarks of Thomas Chan of the Chinese in Britain Forum that the problem will continue unless the Government are more robust about illegal immigration?

Is it not clear that, as many people have said, this was a tragedy waiting to happen? The Government knew of the presence of large numbers of illegal immigrants working in Morecambe bay and of the risks involved in working there, but they did nothing...<sup>49</sup>

A later statement on the Conservative Party website also emphasised the problem of illegal immigration in relation to exploitation from gangmasters.<sup>50</sup>

## **B. The Liberal Democrat Party**

Also in response to the Morecambe Bay statement, Norman Baker spoke for the Liberal Democrats.

**Norman Baker (Lewes) (LD):** ...Should not we do more to prosecute those who appear to be content cruelly to exploit migrant workers and pay them a pittance while making huge sums? Is the Minister aware that the revised figures issued last November show that, since 1997, there were only 22 prosecutions and eight convictions for employing a person subject to immigration controls? Although he referred to other prosecutions regarding VAT and so on, is he satisfied that the law is adequate and that sufficient enforcement is deployed to ensure that those responsible are caught and prosecuted?

I am bound to reflect that the gangmasters are rightly being ruthlessly pursued in the case that we are considering—I am delighted by the law enforcement authorities' actions—but locals have known about such activity for some time. That suggests that this tragedy and others might have been avoided.

I do not want to make this a party political point—the human tragedy is too great—but hon. Members from all parties must learn from it. The Select Committee on Environment, Fisheries and Food stated that it was

"appalled by the lack of priority given to . . . illegal activity by gangmasters."

I hope that we all find ways to try to deal with that. It also said that

"no significant resources had been allocated",

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<sup>49</sup> HC Deb 9 February 2004 cc1122-3

<sup>50</sup> "Davis: labour's refusal to tackle illegal immigration is hurting everyone", *Mail on Sunday*, 15 February 2004 [http://www.conservatives.com/news/show\\_article.cfm?obj\\_id=88577](http://www.conservatives.com/news/show_article.cfm?obj_id=88577)

to Operation Gangmaster, that it had no targets and that there was no Minister to take overall responsibility. We might all have been caught unawares, but we must now try to deal with the issues and ensure that such an incident does not happen again.

Will the Minister deal with the Select Committee's points, especially those about resources and ministerial responsibilities? Will he comment on links with the Home Office, the Department for Work and Pensions and especially the immigration service to ensure that the Government are providing as joined-up a response as possible? Does he accept that, although there is a need to regularise economic migration, thereby providing a genuine outlet for those whom we need in this country, there is an absolute need to clamp down on those who improperly exploit migrant workers?

Will the Minister consider the suggestion of a requirement on farmers and growers to sign a form for the Home Office saying that they will pass on details of subcontractors responsible for employing labour? It would not have helped in the case that we are discussing, but it would provide some chance of keeping a check on some of the activities.<sup>51</sup>

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<sup>51</sup> HC Deb 9 February 2004 cc1124-5