

GLA 33/8.2

GLA Position on Harvesting Arrangements – Section 4(5)

18 April 2012

BOARD PAPER REFERENCE – GLA 33/8.2 – GLA Position on Harvesting Arrangements – Section 4(5)

Issue

1. To consider the GLA position on the various harvesting arrangements covered by section 4(5) of the Gangmasters (Licensing) Act 2004 ("section 4(5)").

Recommendation

2. The Board is invited to approve a proportionate approach to enforcement action in relation to activities covered by section 4(5).

Background

3. Section 4(5) says:

A person ("A") acts as a gangmaster if he uses a worker to do any of the following work to which this Act applies for the purpose of a business carried on by him –

(a) Harvesting or otherwise gathering agricultural produce following:-

(i) A sale, assignment or lease of produce to A, or

(ii) The making of any other agreement with A,

Where the sale, assignment, lease or other agreement was entered into for the purpose of enabling the harvesting or gathering to take place;

(b) Gathering shellfish;

(c) Processing or packaging agricultural produce harvested or gathered as mentioned in paragraph (a).

In this subsection "agricultural produce" means any produce derived from agriculture.

4. Section 4(5)(a) and (c) was included in the Act as an anti-evasion provision with the clause intended to apply to arrangements entered into to evade licensing. Section 4(5)(a) and (c) are designed to ensure that people who act as gangmasters cannot avoid compliance with the Act by artificially presenting their activities as farming.
5. Consultation with the NFU and FPC has confirmed that section 4(5)(a) applies to routine harvesting arrangements and would require a significant number of farmers and growers to be licensed. While there is a need for an anti-evasion provision, the Authority recognises that licences should not be required by

farmers and growers undertaking normal business practices, where the risk of exploitation is low, in circumstances covered by section 4(5)(a).

6. As part of ongoing consideration of the Authority under the Red Tape Challenge, Defra is currently considering whether the Gangmasters Licensing (Exclusions) Regulations 2010 could be amended to take account of this issue. The Exclusion Regulations already provide exemptions for low risk farming activities, for example with farmer-to-farmer loans of workers and using machinery to provide a service.
7. The GLA enforcement activity is intelligence led and targeted according to risk. The Authority will not specifically target normal farming activities of a responsible business caught by section 4(5)(a) and/ or (c). Instead, the GLA will focus its activity in this area on investigating arrangements to purchase crops where the intention appears to be to allow someone who is in substance a "gangmaster" to avoid compliance. This proportionate approach should reassure farmers and growers concerned about the threat of prosecution. Subject to the Board approval, the Authority intends to publish the statement at annex A.
8. It follows that the same operational stance applies to section 4(5)(c). Section 4(5)(b), which concerns gathering shellfish, is not affected by the issues in this paper.

Annex A

GLA Statement on section 4(5)(a) and (c) of the Gangmasters (Licensing) Act 2004

These sub-sections are anti-evasion provisions designed to ensure that people who act as gangmasters cannot avoid compliance with the Act by artificially presenting their activities as farming. The GLA will only investigate arrangements to purchase crops where the intention appears to be to allow someone who is in substance a "gangmaster" to avoid compliance. This is in keeping with GLA's overall approach which is intelligence led and targeted according to risk.