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Health and Safety Executive		Sector Information Minute	
Agriculture and Food Sector		SIM 01/2001/02	
Cancellation Date	17/01/2005	Open Government Status	Fully Open
Version No & Date	2: 18/01/2001	Author Unit/Section	Ag & Wood Sector

Target Audience
All FOD Inspectors inspecting agriculture

HSE POSITION FOR ENFORCEMENT WITHIN MACHINERY RINGS

This SIM advises inspectors on the line to take with enforcement in relation to transactions between members of machinery rings and the responsibilities of the rings themselves.

BACKGROUND

1 The 'Machinery Ring Association of England and Wales' is a central body for machinery rings in England and Wales. They represent 15 individual rings with up to 800 members each and some of which aim to expand to 2000 members each. The rings are individual limited companies in their own right and farmers join as members - only one member allowed per farm and one member one vote regardless of the size of the enterprise. Membership is not limited to farms but includes other countryside bodies. Rings have their own full time staff for administrative purposes but have no employees or machinery for hire. Rings do not handle any machinery involved in contracts. Some rings have subsidiary companies which employ staff for hire and these should be treated simply as individual employment agencies and so are not covered by this SIM.

2 The Scottish Machinery Ring Association is run on the same lines and also services a number of individual machinery rings.

3 The rings facilitate the transfer of machinery and services between members (termed the 'receiver' and the 'provider') which include:

- (1) the hire of plant only;
- (2) the hire of plant with an operator/labour;
- (3) the hire of labour only.

It is possible that some rings will in future also deal in commodities.

4 A member wanting a service will contact his/her ring which will inform them of a provider and advise a guide price; the 2 members then do the deal themselves. The ring charges a 2% commission to each member for the service and carries out the invoicing for the service. Members are hiring in plant/services owned by other members, not owned by the company. Following advice from Solicitors Office and FOD SU the following is the position in relation to hiring out machinery and labour via agricultural machinery rings as presently constituted.

INFORMATION FOR INSPECTORS

5 The rings do not have duties in relation to those of either an employer, a hirer or as an employment agency under ELCI, PUWER'98, LOLER, MHSR, Workplace Regs etc. They act simply as an organisation facilitating the actions of others in hiring out machines and labour. This being the case, responsibilities lie between the 2 members involved in a transaction, not with the ring.

(1) In relation to machinery safety, inspectors should simply treat the provider as being a hirer out of machinery.

(2) In relation to health and safety of labour the duties will vary according to the level of control either party has; ie receiver's duties vary from an employer's duties to those of any employer/self employed person towards persons working on his/her premises, not being his/her employees.

Employers Liability Compulsory Insurance

6 The Act requires an 'employer' to carry ELCI for any employee who works for them. This cannot be carried by a third party such as the Machinery Ring. Where an employer supplies the services of their employee, it may not always be clear whether the employee becomes for the time being the employee of the receiver. But if the arrangement is that the employer supplying the services will continue to pay the employee's wages, and account for tax and NI contributions, and particularly if it is also expressly agreed that the employee will remain employed by the employer supplying his/her services, the recipient will probably not become their employer.

7 However, under the varied circumstances for transactions between ring members there are no hard and fast rules about who counts as an employee. Inspectors should check advice in leaflets HSE 4 *Employers' Liability (Compulsory Insurance) Act 1969: a guide for employers* and HSE 36 *Employers' Liability (Compulsory Insurance) Act 1969: a guide for employees* for guidance.

8 Insurance companies may give different advice and may expect a receiver of services to need ELCI for any incoming persons wherever there is any contract for work. The only time they say they would not need ELCI is where there is a simple verbal agreement to carry out a task between 2 individuals in the nature of 'helping out'. This is their interpretation and they are selling the insurance, so ring members may well have to fall in line with more strict requirements than HSE would require if they want to be covered. In many such transactions they would expect both provider and receiver of services to carry ELCI for the one employee.

Member 'hires' out machinery only to another member

9 This transaction should simply be treated by inspectors as with any hire under PUWER'98 in that the hirer is someone who has 'control to any extent of work equipment' (reg.3(3)(b)). So under PUWER'98 the person **hiring out** must ensure a machine is safe and properly maintained. They should also give instructions for safe use of the machine where necessary. If the hire is long term they should make arrangements for ongoing maintenance for the machine.

10 The person **hiring in** should maintain the safety of the machine in respect of maintaining guards in position etc and carry out day to day maintenance as instructed by the owner.

Any damage to safety components should be reported by the user to the owner and the machine not used until the owner repairs them (this is typically covered in the rules of the rings). (Note also that a machine is 'new' in respect of going onto any other premises so PUWER regs.25-30 apply regardless of the age of the machine.)

Member hires out their own labour to another member

11 Where a member hires out their own labour it may be difficult to determine whether the relationship of employer and employee exists at all. An important test of whether the receiver is his/her employer can be the extent of the receiver's control over that individual's work, eg where and when they work and how they do it, and who provides the materials and equipment for the work.

Farmer 'hires' machine plus labour to another

12 Paragraphs 2, 3 and 4 apply as far as machinery and labour apply. Another aspect is personal protective equipment. The question of who should provide any PPE for a particular task, such as spraying, would also depend on the extent of the employer/employee relationship. For example, where a machine goes with an employee, and the supplier remains his/her employer, the duty remains with the supplier to ensure PPE is provided, eg one would expect the supplier to provide the PPE with a sprayer or chain saw he/she provided. Where a change of work might occur and, for example, sheep dipping might unexpectedly be required of the worker then the supplier/employer must ensure that the receiver of services will provide PPE.

Onward hiring of a machine

13 Where a member's machine, without an operator, is hired on from a first hire to a second hire then the provider should ensure that it comes back to them to be checked for safety and maintenance or they should carry this out at either premises before the second hire takes place. The ring should make this clear in its rules.

Training and certification standards of persons hired out

14 The responsibilities here are under PUWER'98 on the employer (self employed), whoever that is judged to be for a particular contract. The other party to the contract can of course have general duties under HSW Act as well. The ring does not have responsibilities under these regulations, but again should make clear rules for its members on training requirements. It is then up to the individuals concerned on each occasion to check the experience/training of the operator involved before letting his/her services out or receiving those services in.

Date first issued: 17 January 2001

