



# TUC Submission to Consultation

Draft Gangmasters (Exclusions) Regulations 2005

## **Introduction**

The Trades Union Congress is the national centre for Britain's unions, with 67 affiliated trade unions, who have a total membership of over 6.4 million members.

The TUC and its affiliated unions have the protection of workers as a key priority, and consequently have long been concerned over the activities of temporary labour agencies. The low level of regulation of agencies in Britain, coupled with the reduced employment rights which agency workers have under British law result in many agency workers being treated very badly.

The TUC's Working on the Edge Campaign<sup>1</sup> for better rights for agency workers has focused on the shortcomings of current UK legislation, and supported the proposal for an EU Directive on temporary agency work. The TUC has also participated actively in the Ethical Trading Initiative Temporary Labour Working Group and its work on developing a Code of Practice for labour providers in agriculture and fresh produce. The TUC gave its wholehearted support to Jim Sheridan MP's Gangmasters Bill, and was very pleased that it gained the support of all sides of the House, and of the government.

Many of those working for agencies, particularly in the lower skilled jobs, are foreign-born, and the TUC has been active in its support of migrant workers. In particular, it has conducted and commissioned research into the experience of migrant workers in UK<sup>2</sup>. The TUC also maintains contact with new arrivals through its Portuguese Workers Project and provision of advice and information to A8 nationals on the Workers Registration Scheme. These allow access to a rich vein of case-work which informs much of the response given below.

## **Scope of the Gangmasters Licensing Act**

The TUC welcomes the establishment of the Gangmasters Licensing Authority, and wants to ensure that it is able to exercise its powers effectively, in order to reduce the level of abuse of workers rights which is acknowledged to be

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<sup>1</sup> <http://www.tuc.org.uk/theme/index.cfm?theme=ontheedge>

<sup>2</sup> see for example: *Overworked, underpaid and over here - Migrant Workers in Britain*, July 2003, *Gone West - Ukrainians at work in the UK*, March 2004, *Propping up rural and small town Britain -migrant workers from the New Europe*, November 2004, *Forced Labour and Migration to the UK*, Bridget Anderson & Ben Rogaly, TUC, February 2005

widespread in the food and agriculture industries. Unions do not believe, however, that such abuse is restricted to these industries, and at the TUC Congress in 2004, a motion on migrant workers was unanimously passed which included the following paragraph:

*“Congress congratulates Jim Sheridan MP in steering the Gangmasters Bill through Parliament. Congress urges the General Council to make representations to the Government on extending the principle of a registration scheme for gangmasters to other sectors of the economy where appropriate.”<sup>3</sup>*

This submission therefore concentrates on the need for the licensing scheme to extend as far as possible.

The consultation paper suggests that there is only anecdotal evidence of abuse of workers by labour providers outside of agriculture and primary processing. It is worth pointing out that most of the evidence for abuse within those sectors is also anecdotal, but none the worse for that. It was high-profile examples of abuse reported by unions, CABx, and the media that led to the prominence which this topic was given, and contributed to the Act gaining cross-party support. The relative lack of hard data should not in itself be used to justify the exclusion of major parts of the food production chain from coverage by the GLA’s remit.

However, there is some evidence. In response to the House of Commons Environment, Food and Rural Affairs Committee report on Gangmasters that pointed to the absence of hard data<sup>4</sup>, a pilot survey of labour providers attending an ETI seminar in 2003 was conducted by Dr Jennifer Frances. She found that:

*“Seventy five per cent of the respondents provide temporary labour to food processors. Types of work identified in the open questions ranged from sandwich making to meat packing, prepared meals to catering or as one respondent commented 'too numerous to mention'. This indicates that temporary labour is not a phenomenon that is required solely for seasonal and harvest work but may be an embedded practice throughout the food chain.”<sup>5</sup>*

This finding is borne out by the experience of our affiliates (which have submitted their own responses to this consultation), and by the TUC’s own case-work. Three examples are shown below:

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<sup>3</sup> Motion 79 and amendments, **Migrant Workers**, TUC Congress 2004

<sup>4</sup> Environment, Food and Rural Affairs Committee, **Gangmasters**, HC 691

<sup>5</sup> A Pilot Labour Provision Survey for Agriculture and the Fresh Produce Sector, Dr. Jennifer Frances Institute for Manufacturing University of Cambridge (2003)

## Case 1

In 2002 the Portuguese Workers Project assisted a driver who was working for an agency providing largely Portuguese-speaking workers to a variety of workplaces, which included motorway service stations (cleaning and catering staff), meat processing factories (primary and secondary processing) and bakeries (secondary processing). The driver won his Employment Tribunal case for unfair dismissal<sup>6</sup>, but the company went into liquidation, owing £1.2 million, about half of which was to the Inland Revenue and Customs & Excise. He was never paid the compensation awarded by the Tribunal. Companies with the same proprietors are still operating as temporary agencies, and four have registered themselves on the Temporary Labour Working Group website.

## Case 2

Via the Association of Poles in Britain, the TUC was approached by a Polish woman who had worked for an agency providing labour to a snack food manufacturer in West London. Although she worked a 55-hour week, she received only £150 per week, with no pay slips to show deductions. On leaving, she did not receive her wages in hand or last two weeks pay, or accumulated holiday pay. The agency failed to respond to a letter of complaint, and no telephone number was provided to the worker. There was no record of the agency at Companies House. The manufacturer provided cooked snacks (such as crisps) to major high street retailers, as well as its own brands.

## Case 3

The TUC was contacted by e-mail on behalf of a group of Lithuanian workers who were working in a variety of bakeries on the North West. Complaints included unpaid wages, inaccurate pay slips, underpayments of overtime and problems with employer-provided accommodation and transport. Written complaints to the proprietor went unaddressed. A union is now assisting the workers.

These three cases show that the issues facing temporary labour in secondary processing are exactly the same as those facing workers in agriculture and primary processing. Reports from unions organising in industries outside of food show similar problems with agencies operating in catering, hotels and construction in particular.

### **Responses to specific questions**

The TUC's response does not seek to deal with all of the more specialised questions raised in the consultation document, as these go beyond the TUC's expertise. The TUC, however, supports the reservations expressed by the TGWU regarding exclusions for farmer-to-farmer loans.

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<sup>6</sup> A Saraiva -v- MCA International Services Ltd, ET case no. 2302860/2002

*Q1. Are the general powers of review provided by the Act, as modified in these Regulations, sufficient to allow the Authority to adequately monitor the activity of labour providers in circumstances where a licence is not required? If not, what else is required?*

Some labour providers are clearly already operating in more than one sector, and it may be that those accustomed to enhancing their margins by abusive labour practices might shift the focus of their operations into unregulated areas as the licensing scheme comes into force. For these reasons, it will be important for the GLA to be able to monitor and report on evidence of abuse in other sectors, even though they may currently be beyond the remit of the licensing scheme. As currently worded, the Regulations do not precisely require (or perhaps permit) this.

*Q2. Do you think that initial processing should come within the licensing arrangements as proposed?*

There is no question that all provision of temporary labour for initial processing should be included. However, the proposals include exclusions for initial processing carried out for example in food preparation areas. These are dealt with in answers to subsequent questions.

*Q3. Do you think that catering and retail outlets should be excluded as proposed?*

Complications may arise with such a distinction being made. For example some processing may be carried out centrally for catering businesses, or retail businesses might bring initial processing of produce into their own warehouses. It is hard to see why such arrangements should be excluded. It is important to bear in mind that the licensing does not apply to such work carried out by staff employed directly by the retail or catering operations, but to the provision of labour by labour providers.

*Q4. With regard to second stage processing, which option do you support?*

*Why?*

The TUC considers that all secondary processing should be included, and would therefore support Option 1. Examples given above show that labour providers operating in primary processing also operate in secondary processing, and that workers in secondary processing are reporting the same types of abuse as gave rise to the Act in the first place.

Another important consideration is that some labour users carry out both initial and secondary processing on the same premises. Excluding some of the activities from licensing requirements while including others will make enforcement and inspection problematic. It will also introduce unwelcome grey areas into the licensing process, leaving users unclear about which parts of their activities will require a license check, and which will not.

As drafted, the Act includes all secondary processing. This is likely to be more likely to reduce worker abuse than introducing a range of exclusions, which would only make the introduction of effective protections for workers more difficult.

*Q5. Should initial processing which is undertaken as a minor part of off-farm second stage processing be excluded from the proposed licensing arrangements? If not, why?*

*Q6. Is the boundary between licensed and unlicensed processing work clear? Are there ways in which we might make the boundary clearer?*

*Q7. Should the definition of “initial processing” at Paragraph 4 of the Schedule incorporate all processing done on a farm? If not, why? How would you delineate the boundary between initial processing and second stage processing undertaken on a farm?*

The introduction of exclusions for off-farm processing is likely to encourage the unscrupulous to set up operations which have the deliberate intention of avoiding the Regulations. It will also reduce the scope of protection substantially, leaving workers in significant parts of the production chain to the mercies of unlicensed gangmasters.

As stated above, in response to question 4, including all activities in the food industry will reduce the need for defining technical boundaries. This will make the need for licensing clearer to labour providers, users and workers.

*Q20. Do you agree that these sub-contracting arrangements should be excluded from the licensing requirements?*

*Q21. Are the tests contained in paragraphs 9(a)-(c) adequate to identify bona fide sub-contracting arrangements where the risk of exploitation is low?*

*Q22. Paragraph 9(1) stipulates that the service provided by the subcontractor must be made to a person who owns or operates a food and drink processing business. Are there sub-contracting relationships which will not be covered by this exclusion as they involve the processing of produce to which the Act applies other than food and drink? Should the exclusion be extended to cover these? If so, why?*

Introducing exclusions for sub-contracting arrangement for work carried out on other premises is likely to encourage new practices aimed at avoiding the controls of the licensing scheme. The tests suggested would not preclude the sub-contractor from employing workers in abusive circumstances, albeit on premises rented or owned by the sub-contractor. The key test is whether there is a likelihood of abuse. The arrangements described would as exposed to the same price and time pressures as apply to the same work carried out in other ways. There is no reason to suppose that abuse is any less likely in the sub-contracting arrangements described. The TUC therefore opposes exclusion for sub-contracting.

*Q24. Do you agree that educational institutions and establishments should be excluded from the requirement to obtain a licence? If not, why not?*

*Q25. Are the terms of this exclusion sufficiently prescriptive in order to prevent its exploitation by an unscrupulous labour provider setting up a bogus educational establishments to avoid licensing requirements?*

Excluding educational establishments would be a highly risky move. Only a few days ago, the Foreign Office Minister Lord Triesman spoke of “a massive increase in abuse in the education sector.” He went on to say “Make no mistake: there is a

significant level of abuse by students as with all categories of applicants. Forged documents, applications in false identities, recycling visas, false sponsors, bribing local officials for documents, absconding in the UK after entry all mean that assessing the legitimacy of applications is far from simple.”<sup>7</sup>

He was referring to the abuse by students, but there is considerable evidence that some educational establishments themselves are the guilty parties. Last year a registration scheme for educational establishments was introduced by the DfES in order to counter the growth of so-called “visa factories”. However, this does not require tests on the quality of education provided and is clearly not enough to prevent the determined fraudster from registering and operating a school solely for the purposes of obtaining the right to work for its clients.<sup>8</sup> Offering educational establishments the option of operating as labour providers free of the requirement to register will be putting temptation in the way of some unscrupulous businesses who have already shown themselves to be willing to operate in an unethical manner.

Genuine educational establishments offering temporary labour to the industry should be able to fulfil the registration conditions without major expense, so no exclusions should be offered to this sector.

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<sup>7</sup> Speech by Foreign Office Minister, Lord Triesman, 24/05/05

<sup>8</sup> see for example BBC Inside Out Extra, 14/03/05  
<http://www.bbc.co.uk/insideout/extra/series2/bogus-language-school.shtml>