

DM/PW

29 October 2004

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London

Dear Helen

**THE GANGMASTERS (LICENSING AUTHORITY) REGULATIONS  
CONSULTATION DOCUMENT**

The STUC strongly welcomes the introduction of legislation to regulate the activities of gangmasters.

It is, of course, important that the primary legislation should be supported by a robust regulatory framework.

Our affiliated union the TGWU have played a pivotal role in steering and refining the Gangmaster Licensing Bill. In this respect we commend to you their response to this consultation.

Yours sincerely

David Moxham  
Assistant Secretary



## **The Gangmasters (Licensing Authority) Regulations Defra Consultation Document**

### **Transport & General Workers Union Response**

#### **Introduction**

The Transport and General Workers Union (T&G) is the UK's largest general trade union, representing some 900,000 workers. And, in addition to being this country's only agricultural union, the T&G is also the single largest union in the UK's food chain industries.

The T&G worked closely with Jim Sheridan MP to draft the Gangmasters Licensing Bill. Subsequently, the T&G brought together, and led, the broad coalition of support that, in partnership with Defra, refined Jim Sheridan MP's Private Members Bill and successfully steered it through Parliament and onto the statute books.

The T&G acknowledge the pivotal importance of ensuring that the secondary regulations that follow in the wake of the Gangmasters Licensing Act compliment the primary legislation in such a way as to deliver a regulatory framework for labour providers that is robust, efficient and effective. Consequently, the T&G welcome the opportunity to play our part in shaping the secondary legislation. We have therefore set out our contribution to the Gangmasters (Licensing Authority) Regulations consultation document below.

#### **Summary of T&G Recommendations**

- The Gangmasters Licensing Authority (GLA) should be required by the regulations to establish a labour Representatives Liaison Group to compliment the proposed liaison groups for Labour Providers, Labour Users and Enforcement Agencies (see comments on Regulation 3)
- In addition to outlining details of its operations and effectiveness, the GLA should be able to use its annual report to provide advice to the industry and the Secretary of State, to publish relevant research and to evaluate gangmaster related enforcement and policy (see comments on Regulation 6)
- The GLA Board should draw its membership equally from broad stakeholder groupings. These groupings would be Government, Labour & Community Representatives and Labour Users & Providers (see comments on Regulation 7)
- The size of the Board should be such that there is a balance struck between representation and workability. The T&G tripartite model therefore envisages a maximum of 18 Board members (see comments on Regulation 7)

- ❑ There should be additional regulations setting out the wider obligations of the GLA. For example, on carrying out proactive investigations into suspected/alleged gangmaster abuses (see comments on Regulation 8)
- ❑ The GLA should not issue provisional licences to existing labour providers (see comments on Regulation 8)
- ❑ All payments to Board members, or to members of committees established by the Board, should be in line with the standard/average rates paid by other Non-Departmental Public Bodies (see comments on Regulations 9 & 10)
- ❑ Decisions of the Board should be reached by consensus, rather than by a simple majority vote (see comments on Regulation 11)

## **T&G Comments on proposed Regulations**

### **Citation, commencement & interpretation: Regulation 1**

Purely technical regulation - no comment

### **Constitution of the Authority & the exercise of its functions: Regulation 2**

The T&G fully support the model of a Board that determines and sets the overall objectives of the Gangmasters Licensing Authority (GLA), and an Executive, acting under the directions of the Board that carries out the day-to-day functions of the GLA.

### **Liaison Groups: Regulation 3**

The T&G are entirely supportive of the concept of establishing Liaison Groups. We believe that such groups have the capacity to deliver the objectives of the Act by acting as conduits for feeding industry and workplace expertise, skills and experience into the work and the operations of the GLA.

However, as set out in the consultation document, the proposed model for these Liaison Groups has, in the view of the T&G, a debilitating imbalance: those representing the users and the providers of labour each have an input through their own dedicated groups, yet those representing workers have no such mechanism for communicating with the Authority.

The T&G therefore believe that, in addition to the three Liaison Groups, proposed in the consultation document, a group consisting of the representatives of workers should also be established i.e. there should be a **Labour Representatives Liaison Group**. This would:

- Provide a channel of communications between the Gangmasters Licensing Authority and labour representatives/workers
- Ensure that the Board understands the implications of its decisions for those working in the industries/sectors covered by the Act
- Help the Board keep both the labour provider and the labour user industries under review
- Provide advice on the operation of the legislative framework

The T&G therefore suggest that the **GLA Regulations** (Liaison Groups, Clause 3 – “The Authority shall establish the following liaison groups”) **be amended** as follows:

- ❖ In sub-section (1) there should be an addition – i.e. (d) - which reads “a Labour Representatives Liaison Group, which shall provided a forum for communication between the Authority and labour representatives”.
- ❖ There should be a new sub-section – i.e. (8) – that reads “The Labour Representatives Liaison Group shall ensure that the Board is made aware of the effect that any proposed exercise of the Authority’s functions under the Act is likely to have on workers recruited, used and/or supplied by gangmasters”.

#### **Application of seal & evidence: Regulation 4**

Entirely supportive of this regulation – no further comment

#### **Accounts: Regulation 5**

Entirely supportive of this regulation – no further comment

#### **Corporate plan & report on activities: Regulation 6**

Securing a line of democratic accountability from the GLA, through the Secretary of State (Defra), to Parliament will be crucially important if the GLA is to enjoy legitimacy. The T&G therefore believe that the GLA’s annual report to the Secretary of State – which will, in turn, form the basis of the Secretary of State’s annual report to Parliament – has a key role to play.

Consequently, in order that Parliament can, firstly, have access to an authoritative source of information about gangmasters operating in the industry and, secondly, it can hold both the Secretary of State and the GLA fully to account, we would argue that, in addition to outlining details of its operations and the effectiveness of its activities, the GLA should also be able to use its annual report to do the following:

- Where necessary, make proposals to the Secretary of State to modify any provision contained in the Act
- Make recommendations to improve standards within the industry
- Highlight and promote best practice within the industry
- Publish data/research relating to the operations of gangmasters
- Evaluate the effectiveness of enforcement activities within the industry by government departments and other enforcement agencies
- Evaluate wider government policy on gangmaster operations within the industry

## **Membership of the Board: Regulation 7**

The T&G are committed to the idea that the Board of the Gangmasters Licensing Authority should comprise representatives from the key stakeholder constituencies. We also support the appointment to the Board of a deputy Chair, believing that this position will ensure that the Board is able to meet and to function fully and effectively in the absence of the Chair.

However, we believe that the proposed composition of the Board is too narrowly focused on individual organisations. The T&G would argue that membership of the Board should reflect the **broad constituencies** of interest most affected by the provisions of the Act (i.e. workers, the business community and the Government).

As far as the number of Board members is concerned size matters: too large in number and there is a danger that decision making could become slow, cumbersome and bureaucratic; too small and it will not properly represent all the key stakeholders. So, while the 13 to 23 range set out in the consultation is one that the T&G can support, we would want to ensure that the level of membership decided upon strikes **the right balance between representation and workability**.

The T&G are also concerned that, as proposed in the GLA consultation paper, the composition of the Board has a potentially **undermining imbalance**. We are concerned that this imbalance could mean that:

- One group could dominate the GLA and therefore have an unhealthy influence over its work agenda and its operations.
- Dominance by one particular group could result in either a less effective or a too expensive model of licensing.
- Dominance by one particular group could undermine the legitimacy of the Board and of the GLA. This is because, if the Board is perceived by politicians, media commentators and/or the public to overwhelmingly represent the interests of employers, producers, labour providers and business then it could be left open to charges of self-policing and self-regulation should there be another Morecambe Bay type tragedy.
- Dominance by one particular group would make it too easy for those representatives in the minority group to "walk away" from decisions i.e. the minority group might be less likely to want to share responsibility for the hard choices and tough decisions that the Board will have to take.

The T&G would therefore recommend that membership of the Board be drawn from **three core stakeholder groupings**.

We suggest that have a maximum of six members are drawn from each grouping. However, providing the total number of Board members stays within the 13-23 limits set out in the consultation, the T&G is happy to consider alternative suggestions in respect of the numbers of each group.

These groupings are not intended to be institutionalised voting blocs on the board. Instead their purpose is to ensure that the composition of the board reflects, and gives equal representation to, the broad constituencies of stakeholder interest.

We would suggest the following as the three broad stakeholder groupings from which representatives should be drawn:

**"Labour and Community Representatives grouping"** (effectively this stakeholder grouping would provide members from organisations representing workers and the community)

**"Labour Users and Providers group"** (effectively this stakeholder grouping would provide members from organisations in the business community i.e. those representing employers/producers/labour providers)

**"Government group"** (effectively this stakeholder grouping would provide members from key government departments and devolved government)

The T&G would suggest that the following organisations within each of the broad groupings should provide board members:

**"Labour and community representatives grouping":**

Maximum of six members from:

- I. The Transport & General Workers Union (T&G)
- II. The General Municipal & Boiler Makers Union (GMB)
- III. The Union of Shop, Distributive & Allied Trades (USDAW)
- IV. The Trades Union Congress (TUC)
- V. The National Citizens Advice Bureaux (Nacabx)
- VI. A migrant workers' association (e.g. the Portuguese Workers Association).

The T&G, GMB and USDAW are suggested as they are the main food chain trade unions representing workers covered by the new Act. The TUC's membership will allow the Board to draw upon its in-depth cross-sectoral knowledge, as well as its skills and experience in the areas of employment law, regulation and enforcement. Nacabx's membership enables the Board to reach out to, and communicate with, vulnerable workers who are at risk of, or have suffered abuses by, rogue labour providers and who may not be trade union members. The inclusion of a migrant workers' association will ensure that the Board has a means of communicating with the growing migrant worker community. This particular member could change over time to reflect the changing demographics of the migrant worker population in the sectors covered by the Act.

**"Labour Users and Providers grouping":**

Maximum of six members from:

- I. The National Farmers Union (NFU)
- II. The Association of Labour Providers (ALP)
- III. The Recruitment & Employment Confederation (REC)
- IV. The British Retail Consortium (BRC)
- V. The Fresh Produce Consortium (FPC)
- VI. The Shell Fish Association of Great Britain

This suggested composition ensures that the Board is also guided by the advice and expertise of key employer, producer and business stakeholders affected by the Act. The NFU, the FPC and the Shell Fish Association represent producers and labour users, the BRC represents retailers and the ALP and the REC represent labour providers.

### **"Government Grouping":**

Maximum of six members from:

- I. Department for Environment Food & Rural Affairs (Defra)
- II. Department for Work & Pensions (DWP)
- III. Home Office
- IV. Scottish Parliament
- V. National Assembly for Wales
- VI. Northern Ireland Assembly

This suggested composition ensures the input of those central government departments with specific industry and enforcement responsibilities. It also reflects the UK-wide coverage of the Act, with representation from devolved government. In view of the inclusion of employment agencies/businesses within the remit of the Act, and taking into account the wider employment rights and enforcement implications of the Act, there may also be a case for the inclusion of the Department of Trade and Industry (DTI) on the Board, perhaps in an *ex officio* capacity (see below).

The T&G believe that the Board should also have access to the widest range of advice, skills and expertise – particularly in respect of compliance and enforcement related matters. We therefore suggest the establishment of an *ex officio* group:

**Ex officio group suggested members:** Ethical Trading Initiative, the DTI, Local Government Association, Association of Chief Police Officers and enforcement agencies such as Customs & Excise, the Health and Safety Executive and the Inland Revenue.

The T&G believe that a tripartite model based on broad constituency groupings offers the following advantages:

- There is clarity, balance and legitimacy - no single interest group can dominate and dictate the Board's proceedings
- The licensing system agreed upon will fairly reflect the interests of all representatives
- Every Board member will be equally tied into the decisions and actions of the Board
- The maximum number of voting members allowed on this tripartite Board (i.e. 18) means that the Board is not so large that it will collapse under its own weight.
- A Board of this maximum size will ensure an effective decision making process.
- The maximum Board membership envisaged under this model falls within the 13-23 limits outlined in the consultation.
- Drawing members from broad constituencies will simplify the procedure for future appointments

### **Licensing functions & the register of licences: Regulation 8**

The T&G endorse the general objectives set out in the consultation paper that the Authority is obliged to meet in determining licensing conditions (i.e. that a licensed gangmaster does not exploit their workers and that they comply with all relevant statutory requirements, including the

terms and conditions of the Gangmaster Operating Licence). In addition, the T&G support the specific obligation to maintain a register of licensed gangmasters for public inspection. An accurate, up-to-date and easily accessible register will be a crucial tool, both for identifying and tracking labour providers and for confirming their legitimacy.

We also welcome the duty of the GLA to ensure that the licence requires employment agencies/business covered by the Gangmasters Licensing Act to comply with the requirements of the Employment Agencies Act 1973 (EAA). In our opinion this would have the effect of putting in place a single regulatory regime for all gangmasters. It would also close down a potential loophole for those labour providers who might regard licensing and registration under the Gangmasters Act as a means of avoiding the legal duties placed upon them by the EAA.

The T&G recognise that Regulation 8 focuses on the GLA's objectives in respect of the granting of licences, the operation of the register and the making of licensing rules (i.e. sections 7 and 8 of the Act). However, in order that the compliance and enforcement regime for labour providers is rigorous, effective and flexible enough to allow the Authority to achieve its overarching goals of protecting workers and ensuring that gangmasters meet their statutory obligations, we would argue that there should be **additional regulations setting out the wider obligations of the Authority**.

In our view, these wider obligations must include the following:

- Carrying out proactive investigations into suspected/alleged gangmaster abuses, infringements of the licence conditions and/or breaches of the criminal offences of the Act
- Monitoring, evaluating and reporting on government policy on gangmasters
- Monitoring, evaluating and reporting on the enforcement activities – in respect of the Act – of government departments and other enforcement agencies
- Supporting and complimenting the enforcement activities of those government departments and agencies responsible for enforcing the criminal offences of the Act
- Undertaking, and publishing when appropriate, gangmaster related research
- Advising the industry on meeting the requirements of the Act
- Encouraging labour providers and labour users to improve their standards by putting in place a framework for developing, promoting and disseminating best practice
- Developing the GLA as a centre of knowledge and expertise which enables and encourages effective industry development

While the T&G acknowledge that a system of provisional licences may be required to enable new labour providers to start up a business and enter the market, we **oppose the issuing of provisional licences to existing labour providers**.

We reject the idea, as stated in the proposed regulations, that the Authority “*shall assume in relation to any application...that the applicant is a fit person to be granted the licence*”. In our view, until an applicant can fully demonstrate that they meet all of the necessary criteria to be

granted a licence, **the Authority must presume the exact opposite** – i.e. that the applicant is not a fit person to be granted a licence.

The T&G are concerned that provisional licences could confer the appearance of legitimacy where, in actuality, none may exist. Potentially, provisional licences could mislead labour users into believing that they were contracting the services of *bona fide* gangmasters when in fact, and unknown to them, that particular gangmaster was a rogue operator engaged in exploitation and criminal activity.

Moreover, the credibility of the GLA could be seriously threatened by the occurrence, and subsequent media reporting of, any major offence committed by a rogue gangmaster operating under a provisional licence: in such circumstances for the media, for politicians and for the public the difference between the GLA issuing a provisional licence and a full licence will be one of semantics – the GLA would simply be viewed as having legitimised an illegitimate operator.

The T&G would therefore recommend that, rather than issuing provisional licences, the GLA set two deadlines:

- I. A date by which applicants must register their application for a full licence
- II. A date by which all applications will be assessed/all applicants audited and from which all those operating without a licence will be deemed to be breaking the law

These two deadline dates should also be accompanied by a GLA/Defra led awareness raising campaign in the industries and sectors covered by the Act.

### **Tenure of office & remuneration of Board members: Regulation 9**

The T&G support the proposed regulations on the number of terms and length of term that Board members may serve; on the terms of appointment and reappointment; and on remuneration. We note that it will be for the Secretary of State to determine the level of payment to be made to Board members by the Authority. We believe that any such payments must not be excessive and should be in line with the standard/average rates paid by other Non-Departmental Public Bodies (NDPBs)

### **Committees: Regulation 10**

The T&G support the proposal that the Board has the power, if it feels it necessary, to set up committees to give it advice relating to how best to carry out its functions under the Act. However, the role of these committees should be entirely an advisory one and their status must always be subordinate to that of the Board and the Liaison Groups. Providing these criteria are met, we are not opposed to their membership being open to non-Board members. As with the remuneration for Board members, payment to committee members should not be excessive and should be in line with standard/average rates paid by other NDPBs.

### **Proceedings of the Board and its committees: Regulation 11**

We endorse the proposal that the Board should regulate its own proceedings. In respect of voting procedures for the Board the T&G would favour a system by which Board decisions were reached by consensus, rather than by voting. However, if the simple majority vote is adopted by the GLA Board as its favoured system, then we could only support such a system if each vote were of equal value. In our view, the only means of ensuring equal value of votes is

to draw membership equally from the three broad stakeholder groupings that we have suggested earlier in this response document..

We do have some concerns about the proposed quorum provision under Regulation 11 i.e. for a minimum of 13 members. This is because we regard this figure as contradicting Regulation 7 which states that, in addition to the Chair or Deputy Chair, Board membership will consist of between 13 and 23 members.

The T&G therefore believe that, if the number of Board members is at the top end of the range set out in Regulation 7 (i.e. 23 members) then the quorum should be set at 13. However, if the number of Board members is at the bottom end (i.e. 13 members) then the quorum should be set at 8 members. The T&G suggestion for the maximum number of Board members is 18 (see T&G comments under "Membership of the Board"). In these circumstances we would recommend a quorum of 10 members. All suggested quorum numbers would include the Chair or Deputy Chair.

**Record of proceedings: Regulation 12**

Entirely supportive of this regulation – no further comment

**Staff of the Executive: Regulation 13**

Entirely supportive of this regulation – no further comment

**Remuneration etc of staff, agents or consultants of the Executive: Regulation 14**

Entirely supportive of this regulation – no further comment