

9.6 Exclusions

Summary of comments

3 January 2006

SUMMARY OF COMMENTS RECEIVED IN RESPONSE TO THE SECOND CONSULTATION ON THE GANGMASTERS (EXCLUSIONS) REGULATIONS

Note: In this summary:

the Gangmasters (Licensing) Act 2004 is referred to as "the 2004 Act";

The Gangmasters (Exclusion) Regulations are referred to as "the Regulations" and

The Gangmasters Licensing Authority is referred to as "the GLA".

Where a response has addressed a specific question asked by the consultation document the response is summarised by the question asked. Otherwise responses are summarised under Question 1 (*Which of the four options do you support? why?*).

CONSULTATION DOCUMENT

Background

This is the second consultation conducted by Defra on proposals for the Gangmasters (Exclusions) Regulations. Between February and May 2005 Defra consulted on proposals to exclude certain circumstances from the licensing requirements. These related primarily to the small scale supply of labour that does not involve the supply of gang labour or where there is no significant risk that gang labour will be exploited. A summary of responses to that consultation is available on Defra's website at;

<http://www.defra.gov.uk/corporate/consult/responses.htm>

The second consultation dealt specifically with the treatment of food processing and packaging activities and did not seek further views on the other issues dealt with in the earlier exercise. The consultation sought views on four options for determining the extent to which the supply of workers to undertake processing and packaging of food and drink should be covered by the licensing requirements. The four options were;

Option 1 – Exclude second stage processing as proposed in the first consultation

Option 2 – Exclude second stage processing using a refined definition of initial / second stage processing linked to a review of the definition and its impact by the Gangmasters Licensing Authority

Option 3 – Exclude all off farm facilities linked to a review of off-farm labour provider activity by the Gangmasters Licensing Authority

Option 4 – No exclusions for processing and packaging of food and agricultural products

The responses were as follows;

Q1 *Which of the four options do you support? why?*

New England Seafood International Ltd, British Retail Consortium (BRC), Whychavon District Council, Vitacress Salads Ltd, Sainsbury, HOPS Labour Solutions, Councillor Jack Bantoft (of the Borough Council of King's Lynn and West Norfolk), **CJ Hallett JP, National Farmers' Union (NFU), Mack Multiples, Mack Service, Primafruit Ltd, Waitrose Ltd, HM Revenue & Customs (HMRC), The**

Borough Council of King's Lynn and West Norfolk, Food & Drink Federation (FDF), The Arthur Rank Centre, Worldwide Fruit, Premier Foods, Intergreen UK, Association of Labour Providers (ALP), Tesco, Fresh Produce Consortium (FPC), Flamingo Holdings, Flamingo UK Ltd, Butters Group Ltd, Kinnerton Ltd, Nocton Ltd, Marks and Spencer, Fyffes, PJJ Recruitment, Farmforce, Somerfield, Temporary Labour Working Group (TLWG) Technical Group, Suncrop Produce Ltd, GLA, Ethical Trading Initiative (ETI), Geest, Co-operative Group, DGM Growers, Varfell, Sea Fish Industry Authority (SFIA), Grampian Country Food Group, GMB, Transport & General Workers' Union (TGWU) and Department for Work and Pensions (DWP) supported option 4.

BRC thinks the comprehensive scope of option 4 leaves labour providers and users in no doubt about their responsibilities under the scheme, closes off potential loopholes and also sends a clear message from Government about its determination to tackle illegal labour providers. BRC also say that bringing the whole of the processing sector within the scope of the scheme will avoid the problem of displacement of labour providers seeking to avoid licensing while promoting fair competition among labour providers.

Vitacress Salads Ltd also expresses similar concerns about the implications for a level competitive playing field and the creation of potential loopholes if one of the other options is adopted. Vitacress also speculates that a failure to adopt Option 4 might cause the supermarkets to introduce their own measures to audit labour providers operating in second stage processing. **Worldwide Fruit** and **Intergreen UK** make similar points.

HOPS Labour Solutions supports Option 4 for the advantages identified in the consultation document and on the basis that few additional labour providers would be brought within the scope of the scheme according to the Regulatory Impact Assessment provided as part of the consultation exercise.

Councillor Jack Bantoft, noting his impression that most gang work in the Fens was carried out in processing and packing, supports Option 4 as it would extend regulation to these activities.

NFU argues that any option other than 4 will allow serious abuses and exploitation in second stage processing to continue unchecked. It also argues that the other options could lead to confusion about the exact scope of the scheme's boundary and distort competition between the included and excluded sectors. NFU also expresses concerns that Options 1 to 3 will create loopholes and restrict the flexibility of labour users to switch workers between regulated and unregulated activities.

Mack Multiples, Mack Service and **Primafruit** said that Option 4 is the simplest to understand, reflects the way that the industry is organised, provides greatest flexibility to labour users and offers the greatest safeguard against the creation of loopholes. It identifies several disadvantages with the other options including limited coverage of the scheme (Option 2) and the potential creation of loopholes (Option 3).

Waitrose, noting the level of non-compliances in second stage processing uncovered by the audit of labour providers against the TLWG's Code of Practice, argues that Option 4 is the only workable and sensible option as it reflects the way that the market is organised while maximising protection against illegal labour providers. Waitrose identifies many of the shortcomings noted by other respondents about the other options.

HMRC supports option 4 as it is the most effective option for tackling tax fraud committed by labour providers. It argues that the other options limit HMRC's scope to address tax fraud while creating a risk that illegal activity would be displaced to the sectors not regulated by licensing. With regard to Option 3 HMRC observes that some of the highest risk sites (such as packhouses) are based off-farm. It also argues that this option generates the risk of artificial on/off farm boundaries being created.

The Borough Council of King's Lynn and West Norfolk supports Option 4 on the basis that it provides the widest protection for agency workers while doing most to promote fair competition between labour providers.

The **FDF** favours Option 4 as labour providers are active throughout the food chain and drawing a distinction between different parts of the food chain could create confusion about the legal obligations of labour providers and labour users in relation to the scheme. The FDF also thinks that distinguishing between first and second stage processing could lead to the creation of loopholes. The **FPC** makes similar comments about the impracticality of basing the licence scheme on a distinction between initial and second stage processing and the potential loopholes that could arise if one of the other options is adopted. To support its argument the FPC draws attention to the level of non-compliance in second stage processing uncovered by the TLWG programme of labour provider audits.

The Arthur Rank Centre (the churches rural resources unit) supports Option 4 as it would extend the protection of the licensing scheme to the greatest number of people.

The **ALP** supports Option 4 on the basis that the scheme should be based on the structure of the industry it seeks to regulate. In the ALP's view no evidence exists to suggest that exploitation and illegal activity is any different in one sector of the food chain compared with another. In the absence of this evidence the ALP argues that it would be illogical for the scheme's scope to only partially cover the food processing and packaging sector. The ALP also thinks that any other option would cause practical difficulties in the operation of the scheme while two of the options would create potential loopholes which could be exploited by labour providers and users in order to avoid the licensing requirements.

PJL Recruitment fully supports the response of the ALP.

Tesco supports Option 4 on the grounds that it is inclusive and creates the greatest transparency in the operation of the food chain. Tesco also notes that the inclusion of second stage processing and packaging would allow the company to exert (through its own suppliers) greater influence on labour providers to comply with the scheme's requirements compared with a scheme which extended no further than the farmgate.

Flamingo Holdings said that Option 4 would drive forward best practice in the food chain.

Marks and Spencer argues that the non-compliances uncovered by the TLWG audits support the need to adopt Option 4. It identifies several disadvantages with the other options, including confusion over the dividing line between regulated and unregulated activity, displacement of illegal activity and the creation of potential loopholes. Citing estimates contained in the RIA, It also argues that the additional burden imposed by Option 4 would be relatively low while the scope of Option 4 corresponds with the way that the processing and packaging sector is structured.

Proactive Recruitment Ltd said that it would be difficult to police any distinction made between initial and second stage processing.

Fyffes said that the scheme must cover the whole of the sector to be effective.

Farmforce said that any options other than Option 4 would be impossible to police.

Somerfield argues that any distinction made between initial and second stage processing is artificial and unworkable in practice. It said that if any option is chosen then individual retailers may choose to implement their own control systems, which could lead to additional costs being passed down the supply chain.

The **TLWG Technical Group** support Option 4 as this would maximise the impact of licensing, minimise displacement in the food chain and provide greatest clarification to labour users and providers about the scope of the scheme. The Technical Group also notes that the scope of the scheme could be reduced at a later time, if this course of action was considered to be appropriate.

The **GLA Board** supports Option 4 on the basis that it provides certainty as to the scope of the scheme to labour providers and users, provides the best basis for effective enforcement of the licensing scheme and does not undermine the viability of the GLA through the exclusion of the processing sector. The GLA discounts Options 1 and 2 as these would be operationally difficult to implement and rely on the construction of artificial distinctions between initial and second stage processing. It also does not support Option 3 as the distinction between on and off farm could be exploited as a loophole by labour providers determined to avoid the licensing requirement. In addition Option 3 could give rise to unfair competition between on and off farm processing.

The **ETI** supports Option 4 as it best addresses the significant levels of abuse of workers in the processing sector uncovered by the TLWG programme of labour provider audits. A short analysis - taken from the ETI's response - is provided at Annex A. ETI also argues that this option is the most workable, the fairest and provides the greatest clarity for labour users and providers. In the ETI's view the adoption of one of the other options could lead (in the absence of statutory regulation) to the setting up of voluntary schemes which would lead to the imposition of significant additional costs on labour providers and users in the food supply chains of the retailers. It also expressed concern about the creation of potential loopholes if Option 4 is not adopted.

Geest said that it supports Option 4 as making a distinction between initial and second stage processing would be unworkable for the company. In particular Geest argues that limiting the scope of licensing to the inclusion of initial processing would limit flexibility to deploy labour providers, cause confusion, create unfair competition between labour users and between labour providers, increase administrative burdens on labour users and labour providers and lead to displacement of labour provider activity into unregulated sectors.

The Co-operative Group supports Option 4 as this extends regulation to all areas of the processing sector while minimising the scope for displacement. The Group sees several disadvantages with the other options, including uneven protection of workers in the food supply chain, unfair competition between labour providers, displacement of labour provider activity and a reduction of the number of workers available to work in the regulated sectors. The Co-operative Group also thinks that the other options would lead to a two tier approach to the regulation of labour providers with a statutory licensing scheme being supplemented

in the unregulated sectors by industry led initiatives which will result in increased costs being imposed on the industry as a whole.

DGM supports Option 4 on the grounds that it is easiest to understand, fits in with the structure of the industry and the activities of labour providers and is the most flexible of the options considered by the consultation.

Varfell supported Option 4 as this best provides for fair competition between companies (such as itself) which utilises labour and those of its competitors which take in produce grown elsewhere.

SFIA supports Option 4 as it provides reassurances to labour users that the workers supplied are legitimate, eliminates the need to distinguish between initial and second stage processing, excludes processing and packaging of non-food items and reflects the way that labour providers operate in the processing sector.

GMB supports Option 4 on the basis that it will tackle most effectively illegal labour providers and provide a level playing field for labour providers and users. GMB argues that Option 1 is impractical and unfair in its treatment of workers, Option 2 offers easy loopholes to exploit and could lead to displacement of labour provider activity to unregulated sectors and Option 3 would disadvantage workers based in off farm facilities. To support its case the GMB provided evidence of workers being exploited and of labour providers acting illegally (see Annex B).

In support of Option 4 the **TGWU** said that it best reflects patterns of employment in processing, provides the most robust option for tackling illegal labour providers, minimises unfair competition between labour providers and provides the most practical option for implementing and enforcing the licensing scheme. The TGWU rejects the other options as they remove workers from the scope of the scheme, fail to reflect the way that the processing sector is organised, rely on artificial and unworkable distinctions between initial and second stage processing, create potential loopholes and could create a scheme where labour users and providers are unclear about their legal responsibilities. In conclusion the TGWU notes that there exists a strong industry consensus for the full implementation (with limited exclusions) of the 2004 Act. To substantiate its case the TGWU also provided some information about recent cases of exploitation of workers in second stage processing (see Annex C). The immigration status of a number of the workers involved means that no action can be taken under UK employment legislation to tackle the exploitative activities of the gangmasters involved.

DWP supports Option 4 provided the implementation of this option is consistent with the principles of the Hampton Review and does not impose undue burdens on employers

Barker Ross Ltd supports Option 3 on the basis that on-farm activity carried the greatest risk of exploitation and other forms of illegal activity by labour providers. It is also consistent with the GLA's stated intention of adopting a risk based approach to compliance and enforcement of the licensing scheme. Furthermore, it allows the GLA to concentrate its activities on those areas where the problem of illegal activity is perceived to be greatest. Barker Ross thinks that targeted extensions of the scheme could be considered, but only after the licensing arrangements had been allowed to bed down.

The **Recruitment & Employment Confederation (REC)**, the trade association for the UK recruitment and staffing industry, supports Option 3 on the basis of the views expressed by

its members. It argues that it would be more practicable for enforcement purposes to base the boundary of the licensing scheme on the distinction between off and on farm activity than the definitions of initial and second stage processing used in the consultation document. The REC says it could support the targeted approach to licensing proposed by Option 2, if unequivocal evidence of exploitation was uncovered in second stage processing. However, it noted that the level of complaints it receives from workers in second stage processing does not suggest that exploitation in that sector is widespread. In addition REC said that if the Government decided to retain the definitions of initial and second stage processing used in the first consultation then its preferred option would be Option 1. The REC does not support Option 4 as it argues that this imposes a disproportionate burden on those of its members who are active in the food chain. The majority of REC members have little to do with farm activity and for many their involvement with off farm food processing activity represents a small proportion of their overall business. The REC argues that the extension of licensing to include second stage processing would not be in accordance with Hampton principles given that the research commissioned by Defra did not conclude that exploitation in the sector was endemic. It also argues that the recruitment agencies which it acts for acknowledge that they are governed by the provisions of the Employment Agency legislation and do not represent the type of illegal labour provider which is the target of the 2004 Act. In addition the REC noted that the research commissioned by Defra did not find any evidence of endemic exploitation of workers supplied to undertake second stage processing and packaging.

The **CBI** supports Option 2 on the basis that this most clearly delivers the benefits of risk-based regulation to Government and employers. In the CBI's view it is also consistent with the original intention of the Act to tackle illegal activity and exploitation in agriculture and initial processing. The CBI opposes Option 4 as it thinks that this would extend the scope of the scheme into areas where the problem of illegal activity was not significant. It also thought that this option dilutes the resource available to the GLA to enforce the licensing scheme. In recognition of the difficulties involved in making a distinction between initial and second stage processing the CBI did not support Option 1. Nor did it support Option 3 as it thought that this could give rise to unfair competition between initial processes undertaken on and off farm.

Hudson (part of the Hudson Highland Group Inc) supports Option 1 on the basis that the licensing scheme should be targeted at those sectors where exploitation takes place. It also argues that the effectiveness of the GLA would be better served by limiting the scope of the licensing scheme in this way. Hudson said that it could support Options 3 or 2 (in that order) if Option 1 was not adopted but it could not support Option 4.

The **Institution of Occupational Safety and Health (IOSH)** does not support any of the options as in its view they all allow exclusions from the licensing requirements. The IOSH argues that all gangmasters should be included.

The **North West and North Wales Sea Fisheries Committee** said it would help if the definition of initial processing could include all the processing leading up to and including the cooking of shellfish if a decision is taken to base the scope of the licensing scheme on a demarcation between initial and second stage processing as this would provide for the better regulation of the shellfish industry.

The **Forestry Commission** argues that the forestry industry should be excluded from the scope of the licensing scheme as it is closely regulated and, unlike sectors of the food chain, is not characterised by the supply of gang labour. **The Forestry Contracting Association**

(**FCA**) makes similar points, adding that workers supplied to the industry tend to be skilled rather than casual or seasonal as the work they undertake involves the use of sophisticated machinery and is long term in nature.

Q2 Are there any other options which should be considered?

BRC said that options 1-3 would create confusion as a result of the difficulty involved in drawing a boundary for the licensing scheme which makes a distinction between different types of processing activity. In the view of the BRC this could undermine the credibility of the 2004 Act and its secondary legislation. **Vitacress** said that if Option 3 is adopted then it should be modified to include off-farm initial processing within the licensing scheme.

The **FDf** sees certain advantages in Option 2 as it provides an opportunity to refine the definitions upon which a licensing could be based while allowing the GLA to concentrate its resources on the fresh produce element of the food chain. However it concludes that Option 4 was the best option.

Hudson said it would be necessary to clarify in the Regulations that workers supplied by a labour provider who are not involved in processing and packaging will be excluded from the scope of the scheme.

REC stresses the need to implement a scheme which is manageable and targeted at those areas where exploitation takes place. In its view it is premature to extend licensing to second stage processing before exploitation and illegal activity in agriculture and initial processing has been tackled successfully. Any proposal to extend the scheme into second stage processing should be based on hard evidence.

Marks and Spencer said that options 2 and 3 were unworkable as the licensing requirements could be easily circumvented.

IOSH said that all gangmaster activity associated with processing and packaging should be included within the licensing scheme in order to maximise the health and safety of all potentially vulnerable workers and to avoid ambiguity in the operation of the scheme. It questions why the second consultation included options which exclude second stage processing from licensing when the majority of responses to the first consultation supported the inclusion of second stage processing. It also proposes that the processing and packaging of non-food products should be retained within the licensing scheme.

Q3 Would any of the options have any unintended consequences not already identified?

BRC identifies the undermining of the credibility of the gangmaster legislation as an additional disadvantage if an option other than Option 4 is chosen.

Mack Multiples, Mack Service, DGM Growers and Primafruit predict that any option other than Option 4 might lead to the adoption of an additional, voluntary protocol on the use of labour providers in that part of the processing and packaging sector which is left outside the licensing scheme to assure good practice and a defence of brand reputation

The **REC** said that Option 4 would have a greater impact than that stated by the RIA. It estimated that an additional 520 of its members and up to 775 labour providers in total (not 30 as stated in the RIA) would need to obtain a licence under Option 4.

Q4 Are the statistics at Annex A to the Regulatory Impact Assessment an accurate reflection of the businesses in the sector?

Hudson thinks that the RIA greatly underestimates the number of potential licence holders. In its view the number of labour providers who will need to be licensed could be in the range of 3500-5000.

The **ALP** does not accept the assertion made in the RIA that any restriction from the scope of the scheme would represent a reduction in regulatory burdens.

The **REC** said that the number of additional labour providers who would need to be licensed under Option 4 was far greater than the estimate contained in the RIA. It also thinks that some of the assumptions used to estimate the costs associated with each option were not correct. In addition the REC put forward several advantages for excluding second stage processing from the licensing scheme, including compliance with better regulation principles, more effective use by the GLA of enforcement resources and the minimisation of regulatory burdens, particularly on small businesses. In this context the REC noted that 95% of all recruitment businesses are SMEs, and not 85% as estimated in the RIA.

Other issues raised in the consultation responses

BRC said that they have been informed by the Temporary Labour Working Group that the audits carried out of labour providers who have submitted themselves for audit against the Group's Code of Practice indicate that exploitation of workers in the processing sector is widespread. In their view this evidence supports the argument that there should be no exclusion from licensing for the processing and packaging sector.

The **ALP** said that if voluntary registration is permitted then this should be spelled out in detail with an indication as to whether it is the wish of Government that labour providers across the board should seek voluntary registration with the GLA. On the same subject the **ETI** thinks voluntary licensing is an unusual notion and requested further information about it before it could comment.

REGULATORY IMPACT ASSESSMENT

Geest mentioned that in the process of selecting their preferred suppliers some 207 labour providers have expressed an interest in tendering for business with the company.

Annex A**Analysis of audits carried out under the TLWG implementation of the Code of Practice for labour providers**

1. Evidence from audits carried out by the TLWG provides first hand and conclusive evidence of widespread and serious abuses of workers employed by labour providers in secondary processing and packaging facilities. We believe this to be as extensive in processing and packing as it is in on-farm activity and see no rationale for the blanket exclusions proposed in options 1, 2 and 3. Since March this year, TLWG auditors have visited 204 labour providers, packhouses and processing facilities to assess labour conditions. This has involved confidential interviews with approximately 1250 workers, over 400 senior managers as well as inspections of management systems. Almost all (96%) of these audits have been carried out in processing and packing facilities, the great majority of which could be excluded under options 1, 2 and 3. This represents a unique and very current data set that gives the most detailed, authoritative and independent assessment of labour providers' performance yet available.

2. Of 164 audit reports analysed to date, 90% of labour providers have non-compliances against the GLA draft licensing conditions. In total 889 non-compliances against the draft licensing conditions have been recorded and while 10% of businesses have no non-compliances against this standard, 50% have between 1 and 5, 30% between 6 and 10 and 10% have more than 10. In addition, in some cases auditors have picked up issues of serious concern that could not be robustly investigated in a voluntary initiative such as this. We stress that the TLWG audit is a voluntary scheme that is likely to attract those businesses most confident in their performance. We strongly suspect the real level of illegality to be higher than is revealed in this data-set.

These findings include serious and in some cases persistent abuses of basic rights at work. TLWG auditors found 13 instances of bonded labour, 53 instances of breaches of working time regulations, 28 instances of breaches regarding the employment of children and young workers and 28 instances of illegal deductions from pay.

There are particular features of the Act required to help address this situation that voluntary audit approaches (such as this one) simply do not have. For example while TLWG audits include the vital component of confidential worker interviews, a voluntary, announced inspection of this nature can only provide a snapshot of conditions for workers. A TLWG auditor does not have any legal powers for right of entry into premises or access to documents. The TLWG cannot carry out checks with government departments such as the Home Office, Health and Safety Executive or HMRC. The key element of the audit, workers' testimony, provides a valuable data source, however, without corroboration from statutory sources, this testimony is hard to verify. The members of the TLWG developed and implemented its audit programme as a stepping stone to statutory licensing and its members do not see this as a viable alternative to the application of licensing outlined in Option 4.

Annex B**Evidence of exploitation and illegal activity provided by the GMB**

1. Most of the examples provided below are based on cases that the GMB has encountered in its Midlands Region

Documentation

- Workers are recruited by agencies overseas and promised work. They often have to pay a fee to the agency in exchange for them looking for employment.
- Labour providers selling passports and national insurance numbers to workers.
- The workers are transported to this country by the cheapest means and taken straight to the accommodation.
- Workers have to surrender passports or documents to prevent them working for others

Contracts of Employment

- Where there are contracts, they are made to sign zero hours contracts. The workers are not given translations of these contracts and not really aware of what they are signing.
- In most cases, Workers are not being given any written terms and conditions or contracts which is contrary to UK employment law.
- Workers not provided with an itemised pay statement or if there is a pay statement the deduction are not explained and are unreasonably high.

Accommodation

- Accommodation is often squalid and unsafe, accommodation which is tied to work.
- Workers pay extortionate rents of around £50-£70 a week for a system of "hot-bedding"
- Deductions are made regardless of whether they have had any work
- If any worker is seen to exert their rights and come forward to a union, they are threatened with eviction from the housing.
- Instances of threats and physical or verbal abuse- instances where women and children are at risk in the worker accommodation.

Pay and conditions

- An absence, in some cases, of any direct payments at all to the workers.
- Women workers facing sexual harassment from shift managers and /or representatives of the gangmaster.

2. For these workers, basic literacy is a real problem and they often have no knowledge of their rights or any practical way to exercise them.

3. There is a genuine absence of any information in workers own languages. Although essential, it is not enough just to provide this information, it then needs to be explained to the workers.

4. Many problems faced daily by these workers breach existing rights under UK employment law, for example:

Minimum Wage

- Non payment of NMW – the lowest cases as little as £2.30 per hour. Even if the workers are seen to receive minimum wage, the deductions frequently take them below the limit.

Health & Safety Legislation

- Workers not being provided with any or the bare minimum health and safety information
- They have no advice relating to PPE or COSHH.
- There is no provision of PPE- gloves, footwear, hi-visibility jackets.
- a key area is that the transport provided for their travel to work is usually by overloaded and un-roadworthy vehicles.

Working Time Legislation

- Workers are forced to sign the opt out from the Working Time Directive as a condition of employment. The implications of this are not explained to them. They then go on to work 60 to 80 hour weeks with no proper breaks or time off.
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Accommodation Offset and other deductions

- Unlawful deductions from pay for accommodation or travel
- workers have regular deductions from pay for maintenance and repair of the accommodation but this is rarely carried out.

5. GMB have found that even where trade unions publicise their work within the community and provide English lessons, assistance with childcare and benefits, workers are still afraid of coming forward or coming to a union for fear of losing their jobs and subsequently their home. Workers are tied to the "gangmasters" and this power is being abused.

Other GMB Examples

6. In secondary processing of food, the GMB has experience of 5 major food processing factories in the North West London area where gangmasters provide up to 30% of the total labour at any one time.

7. These employers collectively employ 3,500 workers and produce chilled fresh foods for Sainsbury, Asda, Waitrose, Marks and Spencer and TESCO. They produce goods such as fried snacks, chilled pizzas, bagged salads, and ready meals from freshly produced farm produce.

8. The workers are supplied by a range of labour providers including small untraceable agencies apparently known only to the employer and major high street names. There appears to be little difference in the treatment of the workers between these two groups of labour providers, with a deeply embedded culture of "get away with what you can" enjoyed by established and new providers alike.

9. The employers take great care to advise workers that, in their opinion, they have no responsibility for their welfare while at work and take no steps to meet their responsibilities under health and safety or immigration law.

10. The labour providers operating in the North West London areas do not confine their activities to secondary food processing and often provide labour to other industrial sectors nearby.

Annex C**Information provided by TGWU about recent cases of exploitation of workers in the UK food processing sector**

- In Norfolk one employment agency contract states that employees will be paid 'approximately £5 per hour' (in reality, almost certainly much less). They also have to pay a £45 per week 'management fee'. They are charged £70 per week for accommodation, but could be evicted at 24 hours notice. One worker took home just £53.87 for a 40-hour week – a miserable, illegal £1.30 per hour.
- Another payslip shows workers paying £50 each a week for a seat on the minibus that takes them to the food plant. Even if they have no work that day, they still have to pay, meaning they can easily end up in debt, in practice bonded to their employer, while the gangmaster makes £500 per week just for getting the 10 workers to their place of work.
- In both Wales and the North West, workers have been told that if they join a union, they and their colleagues will be sacked. In Wales, two women workers who had complained about poor health and safety standards were sacked and would have been immediately evicted from their home if the union had not intervened.
- The T&G took up the case of Polish agency workers working in a meat processing factory in Exeter who were charged £40 a week each for 10 people sharing a 2-bedroomed house.

Detailed case study

About 3 - 4 months ago when 3 Polish women came to our office in Swansea. They worked in a food packaging factory processing ethnic cuisine, but they were put there to work by an agency. They had been in the UK here for three months. For the first two months they had quite regular work, however, when they complained that they were not getting enough work the Agency stopped finding them work all together. Without employment for nearly a month, they were now being threatened with eviction from their property.

The T&G examined their contracts and were alarmed to find out that it was a Zero Hours Contract and also in the contract it stated that if they wished to leave their employment within the first 3 months then they would have to pay back £250 plus any outstanding monies to the Agency. The £250 was made up by £100 administration charge, £100 for a single ticket to Poland and £50 paid by the agency on their behalf to register them with the Home Office. This was money that they obviously did not have due to the fact they hadn't worked for a month and owed money for rent.

We contacted CSA regarding their situation and managed to get them to agree to waiver the payment and also to let them stay in the house for another week. During that week we spoke to the women every day and each time we were horrified at the way these workers were treated. It is my view that they were basically being kept in legalised slavery.

They said that they paid £200 on the bus in Poland to come to the UK, in cash with no receipt. The bus was full and they were transported non-stop from Kutno to Llanelli, a

journey of nearly 3 days. On their arrival at agency office in Wales, before they had a chance to eat or wash and change or get some sleep they were taken 10 at a time into the office and told to sign their contract. Other workers have told me since that it was only when they read the contract the following day having had some rest that they realised that it was written in half English and half Polish, they were so tired that they didn't recognise their own language.

The workers are then found work in either of two food processing and packaging factories. The shift they were put on determined how much work they got. In one factory the workers can then work anything between 12-16 hours every day. Those workers without work still have to travel to the factory but are then sent home. They are still deducted £25 a week for 'transport costs' even though they have not worked, thus putting them into difficulties and debt to the agency.

Through talking to these workers we found out that rent was another deduction that was made from their pay irrespective of whether they could afford it or not. Some are being charged £35 a week and others more. We were told that these women were living in a 2-bedroom mid-terrace house and there were 9 people living in it, all paying £35 a week i.e. £315 per week in total in an area of the country where the market rate for rented houses is considerably less.

I have copies of some of these workers' pay slips showing just over 60 hours worked in a 2 week period at £4.85 an hour making the total earned £287.00. However, after deductions their take home pay for this 2 week period was £47.10.

We have held mass meetings with the workers in which they have had the opportunity to tell us what exactly is going on and for us to inform them of their basic employment rights. The overwhelming feeling that we had from this group of workers is that they were too afraid to confront the agency about their treatment for fear of the consequences, whether that meant a reduction in their hours or even dismissal and eviction.

The workers have told us of an instance in the agency-owned hostel of a woman being raped by another Polish worker and other cases of indecent and sexual assaults. We are also being given information to suggest that the Agency are recruiting convicted criminals from Poland and bringing them to Wales to work. Petty crime has risen in the area over the last few months and local feelings towards the Polish people are beginning to ride high. We have already had one instance of National Front activity in the area which specifically blames migrant workers. We have, however, successfully quashed that threat and are continuing to monitor the situation closely.

The T&G has also been approached by advisors helping workers employed by gangmasters and made aware of the following instances

- An agency in central England that uses workers from non-EU countries on false Portuguese papers to work in food processing and packaging on behalf of leading retailers. The workers can pay between £500 and £1000 for passports, and between £100 and £300 for National Insurance numbers.
- The workers are housed in "hotels" which are actually flats. In one, 17 people were living in a 2-bedroomed flat.

- The workers earned around £150 per week working from 6am until 2pm, Monday until Saturday. This is before deductions were made for transport, accommodation and 'administration' charges.
- The workers were deported following a raid on the factory. However, they have given written statements to the T&G and have left their forwarding addresses in their home countries as they are willing to help with further enquiries. In summary, their statements show that:
- Brazilian workers are being brought to the UK on false Portuguese papers which cost them £500. We are told that "these documents are made in London very quickly. In a matter of an hour they are ready."
- The workers then travel to an employment agency in Leicester; the papers are not closely examined for veracity. Another £200 has then got to be paid to the gangmaster to secure work. For a further £330, the gangmaster will supply identity documents that help the owner evade detection at UK airports and so come in and out of the country freely.
- The workers are found work packing fruit tarts for a leading British high street retailer. The working day began at 3.30am with a walk to catch the agency bus; the shift finishes at 2pm. For six days work workers earn £146 of which around £35 is deducted for rent.
- In a statement to the T&G, the worker "Charles" told us that he came here from Brazil on false Portuguese papers which cost £500. He paid another £100 for a false National Insurance bought on the streets of Leicester. He got a job through an agency working for a leading high street retailer. For this he was paid £4.50 an hour working in a factory producing salad, fruit pies, fruit juices and jellies. "From our earnings we were deducted £18 per week for transport and £5 for the cheques that we had to collect from the agency. On top of that tax deduction was higher than normal. I worked Monday to Saturday, from 6am until 2pm and earned £146 per week. I lived in a flat with my mother and a friend and we paid £424 per month on rent excluding water and electricity bills".
- An immigration raid saw the Brazilian workers detained and removed from the country – on the day before pay day. The workers lost two weeks' salary. The workers strongly suspect that their gangmaster organised the "raid" so as to avoid paying them and in order to make more money out of other workers brought here to work in food processing.
- "We were locked up in horrible cells, with no access to toilets and nearly no access to food. We were even handcuffed. We were locked and treated as criminals. We have been betrayed, cheated and robbed by our gangmaster and the recruitment agency."

List of respondents