



Unite response to the GLA Licensing Standards Consultation

This response is submitted by Unite the Union. Unite is the UK's largest trade union with 2 million members across the private and public sectors. The union's members work in a range of industries including agriculture, manufacturing, financial services, print, media, construction, transport and local government, education, health and not for profit sectors.

Unite the Union is the only trade union to represent agricultural workers including those working in forestry in the UK. It is also the largest union in the food manufacturing and packing sectors. It is therefore the key stakeholder representing workers rights in those sectors covered by gangmasters licensing regulations.

Executive Summary

- Unite broadly welcomes the GLA's attempts to enhance and strengthen the Gangmasters Licensing Standards.
- Most of the proposed changes will be positive in strengthening the GLA's work.
- Unite feels that labour providers that have had their licences revoked should be permanently excluded from providing labour again in the future.
- Unite strongly opposes the suggested changes that undermine the Agricultural Wages Order and National Minimum Wage

- To help strengthen the relationship between the unions and the GLA Unite is calling for the inclusion of retrospective sanctions and remedies for workers affected by abuses to be part of the enforcement regime.

The Unite section case in detail

1. Unite broadly welcomes the GLA's moves to enhance and strengthen the Gangmasters Licensing Standards. The Gangmasters Licensing Standards have been a successful instrument in driving out some of the worst abuses of workers rights in the sectors it covers. There is still serious work to be done and the suggestions under consultation highlight this.

Fit for Purpose

2. Unite believes that the tightening of the definition of 'fit and proper' to exclude those organisations and individuals that have had their licences revoked is a positive move. The GLA gives organisations ample opportunity to improve their practices and those organisations that fail or refuse to comply with the standards have clearly shown that they are not fit to be a labour provider or employer.
3. Unite however thinks that the “two strikes and you are out” model is too lenient. For a gangmaster to have its licence removed it has to have been involved in activities that involve serious negligence or violations of workers’ employment, civil and human rights. If an organisation is prepared to use for example forced labour, disregard workers health and safety or use violence and intimidation – acts that are clear breaches of labour law - Unite feels that this organisation and the individuals involved should be permanently prevented from doing so again.

Notifying the GLA of Changes in Details

4. Unite supports the proposed clarification of the term “significant” in Rule 4(3) of the Gangmasters (Licensing Conditions) (No2) Rules

2006. This will help avoid ambiguity in the future and flush out those organisations that try to avoid compliance.

Forced Labour

5. The fact that “forced labour” is taking place in the UK economy in the 21st century is an absolute travesty. Unite views this as a form of modern day slavery and applauds the GLA's moves to improve the definition of forced labour in the standards. These conditions should definitely be upgraded in seriousness to “critical” as they go to the heart of the GLA's role.

Accommodation

6. Unite supports the GLA proposal to use the BERR interpretation of “effectively providing” when looking at accommodation provision under Licensing Standard 4. This insertion provides a clear and unambiguous definition and will help with enforcement.
7. Unite also supports the inclusion of the requirements of the Gas Safety (Installation and Use) regulations 1994 into Standard 4.3.

Statutory Breaks

8. Unite is concerned by proposals to amend Licensing standard 5.1 around statutory breaks. As with the working time directive opt out it is very clear that while workers may be made aware of their rights regarding time off, breaks and working week there are often pressures that influence their “free choices.” Unite would at the very least like there to be some clear enforceable criteria as to how to ascertain whether a worker is “freely choosing not to take a rest break”.

Health and Safety

9. Unite is supportive of the proposed changes to Standard 6 to bring it better in line with Health and Safety Regulations and clarify the responsibilities around vehicles. Unite would also support the upgrading of standard 6.9 to “critical”.

Work finding fees

10. Unite strongly agrees with the GLA that under no circumstances should workers be required to pay fees for work finding services. This should be made into a separate standard to highlight the importance of the issue and upgraded to critical. Unite also suggests that where monies have been deducted those fees should be returned to workers with interest.

Loans

11. Unite have come across instances of labour providers providing money for flights and equipment and then deducting this from wages – but the workers are unaware of this relationship or have not signed anything to agree this “loan”. Unite feels there should be a standard covering such loans. All monies advanced to workers must be agreed by those workers and signed for. There also should be no extortionate credit or rates of deduction from pay packets.
12. Unite is happy with the moves to replicate changes introduced in the BERR amended Conduct of Employment Agencies and Employment Businesses Regulations 2003 that came into force in April. The requirement for written notice is something that all employment agencies should take up. Once again the GLA is marking itself out as the most progressive enforcement agency.

Legality and Rights of Workers

13. Unite supports the proposal to amend Standard 10.1 by removing references to the Asylum and Immigration Act 1996. On a note of principle the division of workers into those with legal status and those without has led to both the undermining of working conditions across the UK economy and the increased vulnerability of undocumented workers to unscrupulous gangmasters. Unite believes that there should be a process of regularisation for undocumented workers.

Licensing standard categories and scoring

14. Unite has no strong views about changing the categories and scoring system used. It is Unite's view that if the system has no obvious failings it should be consolidated and left to bed down.

Removing of licensing standards

15. Unite would oppose any attempt to remove standards from the licensing standards. The standards themselves have only been in place for a short time and they should be given time to bed down. The best way to better focus the GLA's inspections regime is to increase the resources of the GLA.

Supplying self-employed workers

16. The growth of bogus self-employment across the economy is a major concern to Unite and colleague unions. Often this status is used as a way for employers to renege on their duties regarding tax and statutory employment rights such as holiday and sickness absence. Unite would support moves by the GLA to pursue requirements around the supply of self-employed workers.

Payroll companies

17. Unite is of the view that payroll companies should be included. It will assist small businesses to comply with the law and help to stamp out payroll abuses.

Labour providers based outside the UK

18. Unite supports the suggestion that providers from outside the UK should also comply with the requirements of their home country. This will help coordinate action, the sharing of intelligence and enforcement on non-UK providers. These moves could strengthen the regulation of Labour provision across the EU and beyond.

Shellfish gathering

19. Unite views the regulation of the shellfish gathering industry as crucial. The interpretation of who needs a GLA licence is clear. Unite would support more research into the sector. After the tragic events in Morecombe Bay Unite feels that these standards should remain critical.

Forestry

20. The suggestion that the specific H&S standards for forestry should be included in the standards is welcome.

Paying National Minimum Wage

21. Unite is particularly concerned by suggestions of downgrading the payment of statutory minimum standards of overtime in the agricultural sector to “major”. The Agricultural Wages Orders are the legally enforceable terms and conditions of the sectors they cover and all are considered of equal importance. It is not the GLA’s role to judge the relative importance of elements of the orders.

22. Unite would strongly oppose any moves to do so as it would set a dangerous precedent in undermining the Agricultural Wages Board.

Accommodation offset

23. Unite also strongly opposes suggestions that workers could “freely choose” to pay a higher rate for housing than that provided in the Accommodation offset. This would open a dangerous loop hole that unscrupulous gangmasters would almost certainly exploit.

24. If there is a problem providing adequate accommodation on the current offset employers should respond by pay workers above the minimum wage to cover it. This is more important than ever at a time when the sector is experiencing a labour shortage.

Retrospective enforcement

25. Unite would support a mechanism for the GLA to penalise gangmasters for retrospective abuses. The union has come across serious abuses of workers but was unable to secure the removal of the licence because at the time of inspection, the labour provider had tidied up its act.

A remedy approach to enforcement

26. Where there is clear, documented evidence of abuse, the labour provider must face sanction. Unite would not always look for the removal of that licence, as this would result in jobs being lost. Unite would however strongly recommend a remedy programme such as returning money deducted with interest to workers, recognising their trade union or adequate compensation for abuses. These sanctions should be agreed by the GLA and imposed on the labour provider. Lack of compliance would result in the licence being removed.

Working with the trade union movement

27. These changes would help trade unions work more effectively with the GLA. As it stands after alerting the GLA to abuses the GLA requires unions to go “quiet” while they uncover evidence. The GLA then focusing on upholding the licence criteria rather than securing remedies for the workers affected as a trade union would. By refocusing the standards to ensure remedies for workers as a core function, the GLA would have both strengthened the deterrent against abuse and provided a reason for the labour and community movement to work more closely with it to uncover abuses.

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