



Gangmasters  
Licensing Authority

# Code of practice on compliance and enforcement

June 2014



Working in partnership to protect vulnerable and exploited workers

## Contents

|  |    |
|--|----|
| Foreword – the Purpose of the Code of Practice ..... | 1  |
| 1 Powers and Conduct of GLA Officers.....            | 2  |
| 2 Use of Section 16 Powers .....                     | 3  |
| 3 Criminal Investigations .....                      | 7  |
| 4 Data Protection and Complaints .....               | 10 |

## Foreword – the Purpose of the Code of Practice

The Gangmasters Licensing Authority (GLA) is responsible for:

- preventing worker exploitation
- protecting vulnerable people
- tackling unlicensed/criminal activity and ensuring those licensed operate within the law

Its focus is on labour providers who supply workers to the agriculture, horticulture and shellfish gathering and associated processing and packaging industries, to ensure that:

- unlicensed activity is appropriately prevented, investigated and sanctioned
- those who hold a licence are compliant with the GLA's licensing standards (available from GLA Officers or the GLA website).

Under the Gangmasters (Licensing) Act 2004 (the Act) the GLA has the power to ensure the law is followed and that conditions are fair to workers and legitimate businesses.

In its compliance and enforcement activities it may also consider how a labour provider operates in other industries and whether those operations indicate that:

- a labour provider is not "fit and proper" to hold a licence, or,
- where it has operated without a licence, whether its treatment of workers and the manner that it has operated, demonstrates aggravating factors increasing the severity of the offences committed.

This Code of Practice is issued to persons who are the subject of GLA compliance and enforcement enquiries. The Code is designed to explain:

- the legislative powers of GLA officers and their extent
- how GLA officers should conduct themselves
- the rights of those from whom the GLA may seek information
- what a licence holder, or those who may be the subject of a request for information, may be required to do
- the additional powers in an enforcement enquiry and
- how to complain if you are dissatisfied with the way GLA activity has been conducted.

This Code and the GLA's powers as explained in the Code, applies in England, Wales, Scotland, and Northern Ireland.

Please note this Code of Practice gives general guidance only and should not be regarded as a complete and authoritative statement of the law. If you do not understand any of the contents of the Code you may contact the GLA for clarification or alternatively seek independent advice.

# 1 Powers and Conduct of GLA Officers

## Powers

- 1.1 GLA officers are appointed under Section 15 of the Act. They are cross-designated as both compliance and enforcement officers. Where GLA officers require information from you they will explain what powers they are applying.
- 1.2 GLA officers will issue this Code of Practice on request to people:
  - from whom they require information under Section 16 (see paragraph 2.1- 2.18)
  - whose premises have been entered under the provisions of Section 17 of the Act (see paragraph 3.4- 3.13) and/or
  - who have been detained under the provisions of Section 14 of the Act (see paragraph 3.14 – 3.17).

It is also publicly available by contacting the GLA or downloading it from the GLA website.

## Conduct

- 1.3 GLA officers should:
  - produce evidence of their identity as GLA officers
  - explain what information is required so that you understand what has been requested, why, and can comply fully with legal requirements.
- 1.4 Officers of the GLA should also ensure that you understand what is occurring during the discharge of their compliance or enforcement functions.
- 1.5 If you consider that the GLA officer is proposing a course of action which you think is unreasonable please refer to the complaints procedure (see paragraphs 4.2 – 4.7).

## 2 Use of Section 16 Powers

2.1 Section 16 of the Act allows the GLA to require information from a “relevant person” for the purposes of the Act. A “relevant person” means any person a GLA officer has reasonable cause to believe to be:

- a person acting as a gangmaster
- a person supplied with workers or services by a person acting as a gangmaster (this would include persons often referred to as “labour users” as well as any intermediary operating between a gangmaster and a labour user)
- an employee or agent of either of the above.

In this Code we refer to gangmasters as labour providers.

2.2 The GLA officer conducting the enquiry has the power to:

- require the production of any records required to be kept by the Act e.g. personal data relating to workers – including details of workers’ names and addresses – this includes a power to require records which are kept by means of a computer to be produced in a form in which they can be read and taken away
- inspect and examine those records – this includes a power to require access to, and check the operation of, any computer
- copy or remove those records from the premises where they are kept;
- require an explanation of any such records
- require additional information which might reasonably be needed to establish whether any provision of the Act or condition of a licence is being complied with.

2.3 In requiring additional information or any explanation of records the GLA officer will decide whether it is appropriate for this to be done in the presence of another person.

### In Writing

2.4 A requirement made in writing will be appropriate where the GLA considers it to be the most efficient method of obtaining the information and documents it needs. The notice of information and documents required (which may be a letter or email) sent to you will provide you with sufficient details to enable you to fully comply.

2.5 You will be given a reasonable period of time to comply, which will have regard to the length of time it may take to collate the information requested.

2.6 The notice will state the deadline by which the information and documents are required.

2.7 If you have any difficulty complying with the deadline you should contact the officer to explain. The GLA will then decide whether it is appropriate to make alternative arrangements. See also paragraph 2.19 – 2.22 on “Failure to comply with requests, obstruction and false information”.

## By Visit

- 2.8 An inspection visit will usually be notified in advance in writing, identifying the purpose of the visit. However, there may be occasions where the GLA considers it appropriate to make an unannounced visit as the most effective method of confirming compliance or otherwise, or because it was not possible to contact you in advance.
- 2.9 Entry to premises will be sought under Section 16 where it is necessary to verify whether the conditions of a GLA licence are being complied with or to obtain information required to assess an application for a licence. GLA officers may inspect the premises and question anyone they find there. The number of GLA officers who visit will reflect the circumstances of an enquiry including the volume and nature of information and documentation that may be sought and the number of worker interviews required.
- 2.10 Whilst Section 16 provides a power to enter, it does not allow GLA officers to force entry nor detain people. If they are refused entry, or after being granted entry are asked to leave before completing their inspection, they will do so. However, they will:
- require an explanation of why entry was refused or why they were asked to leave after entry (since a failure to comply without reasonable cause is a criminal offence under Section 18 of the Act)
  - advise the owner, occupier or licence holder representative that any request to leave, which prevents completion of inspection, may be considered as obstruction
  - where appropriate, report the circumstances, which may be taken into account in any licence decision, on whether a licence holder is “fit and proper”
  - advise that the GLA may consider criminal proceedings for obstruction under Section 18 of the Act
- 2.11 GLA officers may seek entry to premises:
- where a person acting as a labour provider carries on a business or keeps records (including any part of domestic premises used for that purpose)
  - where a labour user carries on a business (this may include in sectors outside those regulated by the GLA where a licence applicant and labour user consent to such inspection to assist an application)
  - used in connection with business (e.g. provision of accommodation and/or transport for workers).
- 2.12 Entry will be sought at reasonable times wherever possible (whether arranged in advance or unannounced), bearing in mind the individual circumstances of each case. For example, a reasonable time in relation to a business which regularly commences trading at 6.00 am will differ from one which commences at 9.00 am, or one engaged in outdoor work or office work. If a private dwelling is also used as a business premise the timing of any visit will be determined to avoid domestic disruption where practicable. Unless it is an unannounced visit the GLA will aim to agree a suitable time for a visit to a premises forming part of a private dwelling.

- 2.13 GLA officers do not have the power to seize any documents under Section 16 powers. You will be required to produce original documents or records which they need. Once produced, GLA officers will decide whether to take a copy or remove the original. The GLA officer will only retain, and remove, the original documents, if necessary, and issue a receipt for all of the documents. Any documents which have been removed will be returned as soon as possible after the need for their retention has passed.
- 2.14 If the removal of original documentation adversely impacts the continuation of your business you may request copies, which, where possible, will be provided by the GLA. Any costs of reproduction will be at the expense of the requester, as determined by the GLA, and provided in advance before a copy may be released.
- 2.15 If you are unable to produce the required documents during the visit (e.g. they are stored elsewhere) a record will be made of:
- what has been requested, and
  - the time and place for its production.
- 2.16 This will be recorded on a “production notice”. A copy of the production notice will then be handed to you. You are advised to comply with it within the time allowed.

### Site Visits

- 2.17 Inspection visits may include site visits to the premises of labour users. Access to workers, and to observe the conditions in which they work, may require an inspection tour of the site. The GLA officer may request that the labour provider, and/or the labour user’s site representative accompany the GLA officer during that activity. The GLA officer will explain what assistance may be required on an inspection tour.
- 2.18 Alternatively, if the GLA officer considers it is inappropriate to be accompanied, because it might frustrate the ability to determine compliance, they will undertake the site visit alone, subject to health and safety procedures.

### Failure to Comply with Requests, Obstruction and False Information

- 2.19 You are required by law to comply with any request made by a GLA officer under Section 16 of the Act. Failure to comply without “reasonable cause” amounts to a criminal offence contrary to section 18 of the Act.
- 2.20 Other elements of that offence include:
- intentionally obstructing a GLA Officer who is acting in accordance with their duties
  - making a statement which is false when providing information.



2.21 If you do not comply with a requirement, or explain why you are unable to comply within the time given, the GLA officer will consider whether any explanation given is reasonable. In particular, the GLA does not consider the following to constitute “reasonable cause”:

- inconvenience
- on a site visit, the need to consult lawyers prior to compliance without proper explanation as to why this is necessary (the GLA expects its licence holders and others using the services of labour providers to understand the GLA’s powers)
- the absence of a senior member of staff
- general assertions that information is not required.

2.22 Further, an initial refusal to provide information on an inspection visit, including the refusal to allow access to premises and those individuals at those premises, preventing inspection, may be considered as intentional delay or obstruction. An attempt to prevent a GLA officer removing documents that have been produced to them, see paragraph 2.13 (i.e. are in GLA possession), may also be considered as obstruction.

### Inspection Results

2.23 When a compliance inspection has occurred, you will be notified of the result and any further action that is being taken as soon as possible.

2.24 GLA Officers will not give, either verbally or in writing, any indication as to the result of the inspection at the time it is conducted, but will summarise any issues identified during the inspection. However, where there is an immediate and specific threat to the safety of workers, they will report this fact to the GLA Licensing team who may decide to suspend or revoke the licence “with immediate effect”. In such situations you cannot continue to operate in the industries regulated by the GLA (irrespective of any right of appeal). If you continue to operate you will be committing an offence under Section 12 of the Act.

2.25 Where a licence is revoked without immediate effect, the licence holder normally has the right of appeal and may continue to work pending the outcome of the appeal. Guidance on the appeals procedures can be found on the GLA website.



### 3 Criminal Investigations

3.1 Criminal investigations are initiated where:

- unlicensed trading is alleged (an offence contrary to Section 12(1) of the Act)
- false documents have been used to fraudulently suggest a person is licensed (an offence contrary to section 12(2) of the Act)
- use of an unlicensed gangmaster is alleged, including the use of an unlicensed sub-contractor by a licence holder (an offence contrary to Section 13 of the Act)
- GLA officers are obstructed (an offence contrary to Section 18 of the Act)

3.2 GLA officers may initially use Section 16 powers to gather evidence which subsequently determines that a criminal investigation is necessary. Those powers are set out in section 2 above. During an investigation, further allegations may arise that require the use of Section 16 powers before it can be determined whether additional criminal investigations are necessary.

3.3 In addition to the explanation of GLA specific powers below, a GLA criminal investigation will be conducted in accordance with the rules governing the conduct of criminal investigations in the relevant jurisdiction of the UK.

#### Entry to Premises using Section 17 Powers

3.4 Section 16 powers cannot be used to force entry, search premises, or seize records or other materials.

3.5 In a criminal investigation it may be necessary to enter premises under the authority of a court warrant. The power to enter, search and seize under a warrant is contained in Section 17 of the Act.

3.6 Under Section 17 of the Act a court warrant may be obtained, allowing a GLA officer to enter a premises (using reasonable force if necessary). The court must be satisfied that:

- admission to the premises has been refused, or that refusal is expected, and in either case that the occupier has been informed of the intention to apply for a warrant
- an application for admission or the giving of such notice would defeat the object of the entry
- the case is one of extreme urgency or
- the premises are unoccupied or the occupier is temporarily absent.

3.7 When entering premises under the power of a warrant, the GLA Officer:

- may take with them any other person considered necessary, (e.g. Police Officers, Officers from other Government Departments, Computer Forensics Officers etc.)
- use any equipment deemed necessary
- carry out such inspections and examinations considered necessary

- take possession of any book, document, data, record (in whatever form it is held), including electronic storage devices or product on the premises
  - conduct the search with consideration for the property and privacy of the occupier, where appropriate
  - allow you to have a second independent person witness the search if you are the only person present at the premises, if you request it, and it is practicable to do so
  - discontinue a search once the objective of the search has been met, or it is identified that the information and documents sought are not at the premises being searched
  - issue a copy of the warrant to the occupier or, if no-one is present, leave a copy of the warrant where it can be found.
- 3.8 GLA officers entering premises under the authority of a warrant will only use reasonable force when necessary to affect entry. Where possible they will communicate with the occupant and obtain co-operation to affect entry unless this is impractical or will defeat the object of the entry. When entering under a warrant a similar consideration to that set out in paragraph 2.12 does **not** apply.
- 3.9 When any book, document, data, record or product is removed the GLA officer will provide a record of the items seized as soon as reasonably practicable.
- 3.10 When a GLA officer leaves a premises entered under a warrant, they will ensure the premises are left in a secure manner to prevent unauthorised access by trespassers. Officers will make a full written record of the circumstances of any entry made under the power of a warrant, and the manner in which it was subsequently secured upon leaving. If any complaint of damage arises it should be submitted in accordance with the complaints procedure below.
- 3.11 Any items which have been removed will be returned as soon as possible after the need for their retention has passed. Original property will not be retained if a copy or image is sufficient for evidential purposes. Reasons why property may be retained include:
- as evidence at a trial for an offence
  - to assist the progress of any enquiry or potential criminal proceedings
  - for other investigation (e.g. forensic or financial).
- 3.12 If the removal of original documentation adversely impacts the continuation of your business you may request copies. Where possible these will be provided by the GLA (see paragraph 2.14 regarding the cost of supplying copies). The GLA may **not** provide such documents where it is considered they may be used to:
- prejudice the investigation of an offence
  - result in further offences.
- 3.13 Where the request is refused the grounds for refusal will be communicated to you.

## Power of Arrest

- 3.14 Section 14 of the Act gives a GLA Officer the power to arrest without warrant (except in Scotland). This power may be exercised where there are reasonable grounds for suspecting that a person may be guilty of the following offences:
- acting as an unlicensed gangmaster
  - being in possession of false documents and/or
  - conspiring, attempting, inciting, aiding, abetting, counselling or procuring such an offence.

## At the end of a Criminal Investigation

- 3.15 If you have been investigated for a criminal offence you will be notified of the outcome as soon as possible.
- 3.16 You will be advised of the outcomes following a criminal investigation which are:
- no further action (i.e. not to prosecute; you will be advised of future conduct expected)
  - to refer your case for prosecution.
- 3.17 If your case is referred for prosecution a decision will be taken by the appropriate prosecution authority for the legal jurisdiction where you are based to determine whether there is sufficient evidence of an offence, and that it is in the public interest to prosecute you. If a prosecution is initiated you will be advised accordingly.

## 4 Data Protection and Complaints

### The Data Protection Act

- 4.1 You will not breach the requirements of the Data Protection Act 1998 if you give us information that we have requested even if this relates to personal information that you hold. This is because we have the power under the Gangmasters (Licensing) Act 2004 to request this type of information. The Data Protection Act (Section 35) also provides you with an exemption to the non-disclosure rules as it is a legal requirement to comply with requests for information by the GLA. Any continuing refusal to provide information, relying on the Data Protection Act for doing so, will be considered to be obstruction.

### Complaints

- 4.2 If you feel that a GLA officer has acted in a way which goes beyond their powers or they have behaved unreasonably when seeking information then you may make a complaint. You should set out in detail why you think that the officer behaved inappropriately and send your letter to:

Director of Strategy  
The Gangmasters Licensing Authority  
PO Box 10272  
Nottingham, NG2 9PB

- 4.3 Complaints can also be sent to the GLA by email to: [complaints@gla.gsi.gov.uk](mailto:complaints@gla.gsi.gov.uk).
- 4.4 You should also be aware that making a complaint to the GLA does not affect your right to seek assistance from a Member of Parliament or to refer a complaint to an Ombudsman for independent consideration.

### Complaints to the Ombudsman

- 4.5 Complaints relating to enquiries made by officers of the GLA may be made to the independent Parliamentary Commissioner for Administration, commonly known as the 'Ombudsman'. The Ombudsman deals with complaints about maladministration by public bodies. Any complaint must be made via your Member of Parliament.
- 4.6 The Ombudsman seeks to establish whether a public body has acted correctly and fairly in carrying out its interpretation of the law. Cases for investigation may include those where a public authority:
- is alleged to have done something in the wrong way
  - has done something they should not have done or
  - has failed to do something which they should have done.

- 4.7 The Ombudsman can recommend a variety of remedies, including the payment of compensation to complainants and the revision, adherence to, or clarification of administrative procedures. Further information is available from:

The Parliamentary and Health Service Ombudsman  
Millbank Tower  
Millbank  
London SW1P 4QP  
Tel: 0345 015 4033  
Fax: 0300 061 4000  
**Email:** [phso.enquiries@ombudsman.org.uk](mailto:phso.enquiries@ombudsman.org.uk)

**Gangmasters Licensing Authority**  
PO Box 10272 ■ Nottingham ■ NG2 9PB  
[www.gla.gov.uk](http://www.gla.gov.uk)

e: [enquiries@gla.gsi.gov.uk](mailto:enquiries@gla.gsi.gov.uk)  
t: 0345 602 5020