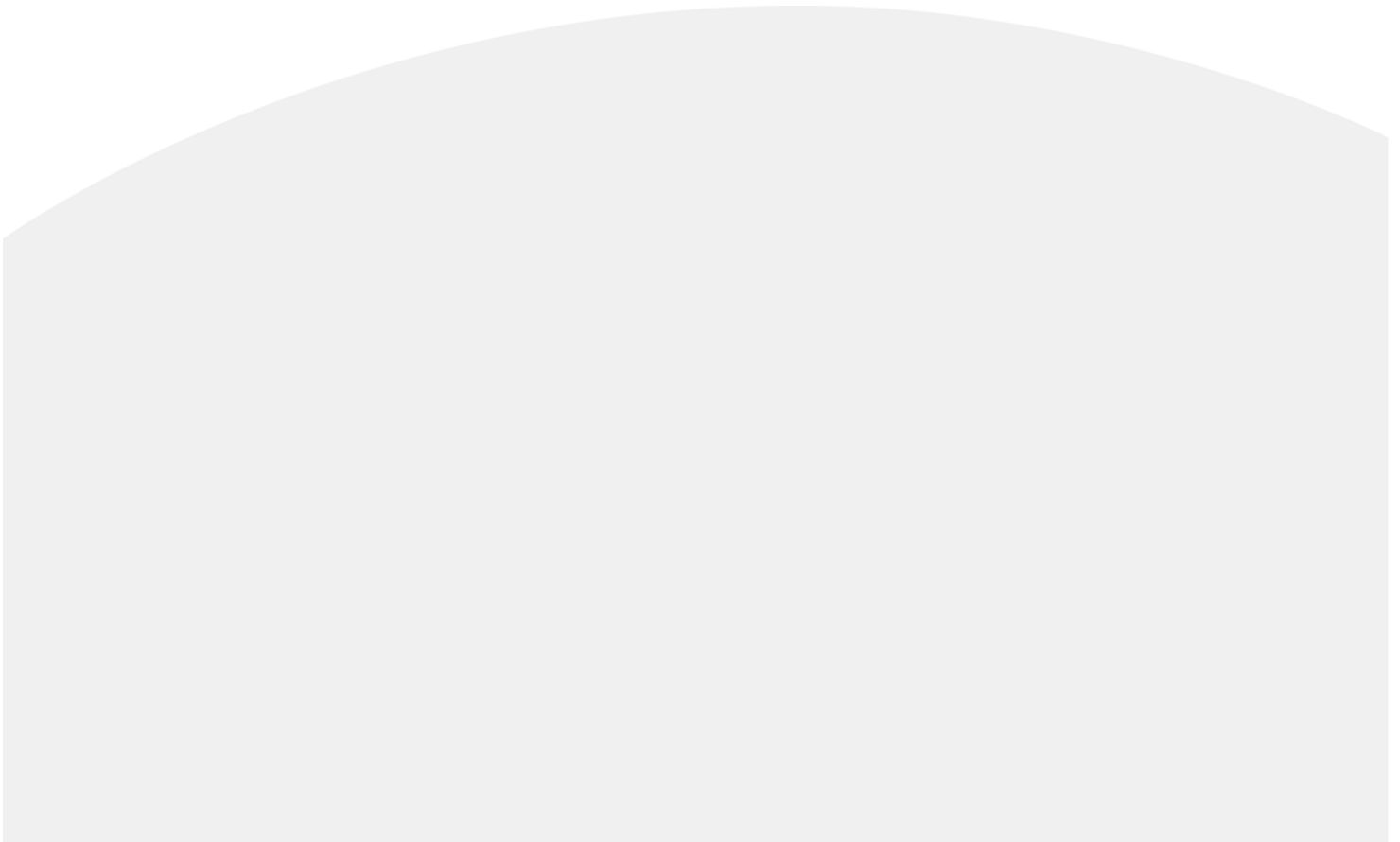




# GLA Licensing Standards

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## **FOREWORD**

*(To be inserted in final version for publication)*

### **1. Introduction**

The Gangmasters (Licensing) Act 2004 aims to curb the exploitation of labour within the agriculture, horticulture, fish processing, gathering shellfish, dairy farming or packaging or processing of these products. The Act led to formation of the Gangmasters Licensing Authority (GLA) in April 2005.

The Act makes it an offence to provide labour to the prescribed industries without a licence. It follows that a licensing system is required. This includes establishing the Licensing Standards. These mandatory Licensing Standards replace the voluntary code introduced by the Ethical Trading Initiative (ETI) and the Temporary Labour Working Group (TLWG). The GLA has incorporated elements of that Code, where relevant to the GLA's Mission Statement, in drawing up the GLA Licence Standards.

There are fundamental differences between the TLWG's voluntary audit regime and the mandatory regime of the GLA, exercising statutory powers, and inspecting Labour Providers. Put simply, although the first aim of the GLA is to encourage and persuade labour providers to act legally, and not to prosecute any business that is intent on compliance, the scope for discretion within the formal procedures is limited.

The GLA exists to ensure the Act is followed and that conditions are fair for legitimate businesses and workers across the sector. There must therefore be a clear and consistent, ability to determine whether a Labour Provider has passed or failed against the Licence Standards. The requirement for labour providers to be licensed ultimately means that everyone in the food supply chain will be able to distinguish between legal and illegal operators.

The Authority recognises that many labour providers are legitimate, hard working businesses. Those businesses should not find it difficult or burdensome to comply with the GLA Licensing Standards.

This guide sets out the GLA's Licensing Standards for use by Labour Providers. It:

- explains the GLA licensing regime,
- identifies the specific areas where the GLA expects a Labour Provider to demonstrate they are compliant.

Application of the Licensing Conditions will be aimed at identifying the more persistent exploitation of workers rather than concentrating on the isolated occurrence of non-compliance.

### **Offences**

The offences created by the Act (section 12) will become enforceable from Autumn of 2006. These will prohibit anyone from:

- Operating as a gangmaster without a licence
- Using an unlicensed gangmaster

The maximum penalty for operating without a licence on conviction is up to 10 years imprisonment and / or a fine. For a Labour User knowingly to employ an unlicensed labour provider, it is on conviction up to 51 weeks imprisonment and / or a fine.

A gangmaster would also commit an offence if he held:

- a relevant document that is known or believed to be false
- a relevant document obtained by deception and known or believed to have been so obtained
- a relevant document that relates to someone else with the intention of causing a third party to believe that the person in possession of the documentation or another person is a licensed gangmaster.

There is also the offence of obstruction of a GLA Officer (section 18 of the Act) in the course of their duties.

**The GLA will also be working closely with a range of Government Departments and Agencies to ensure that all legal requirements are met and enforced in this sector.**

## **2. The GLA Mission Statement**

The Mission of the GLA is to safeguard the welfare and interests of workers whilst ensuring labour providers operate within the law.

The mission will be achieved by:

- Introducing and operating a system to licence labour providers, including a publicly accessible register;
- Effective communication of the legal requirement for labour providers to become licensed, and to operate and remain within the formal economy;
- Imposing the least possible burden on labour providers and labour users through efficient and effective processes and procedures;
- Developing and promoting standards for best practice in the supply and use of labour, in collaboration with stakeholders;
- Checking licence holders for continued compliance with the licence conditions;
- Taking enforcement action against those who operate illegally or who for other reasons are judged unfit to hold a licence;
- Supporting enforcement of the law, by or in conjunction with the enforcement authorities of other government departments, and others as appropriate, through shared information and joint working;
- Maintaining a continuous review of the activities of gangmasters and the effects of the Act and the Authority on them.

The GLA will check through its compliance inspectors that licence holders stay compliant. Those who are judged unfit to hold a licence will not be granted one.

Its enforcement team will not hesitate to take enforcement action against those who operate outside the law.

### **3. The Scope of the Authority to make Rules and Methods of Obtaining Compliance Information**

The GLA's scope and powers to make rules are laid out in the Section 8 of the Act.

As a Regulatory Authority, the GLA is able to collaborate closely with other Government Departments and exchange information through legal gateways.

It has its own Intelligence team and systems and will have its own inspection teams and enforcement officers.

Evidence of compliance will be assessed from a variety of sources, but particularly by:

- Face to face interviews with workers
- Data collected from the Labour Provider
- Interviews with the Labour Provider
- Evidence collected by the GLA's own officers
- Data provided from other Government sources
- Data collected from the Application Process
- Other intelligence sources

The information collected will assist the GLA to determine whether a licence will be granted, refused, suspended or revoked.

## 4. Inspection Visits

There are two types of inspection visit:

- **Application Inspection:** for new applicants. The GLA will use a risk assessment to determine which businesses will be required to undergo an Application Inspection. If a Labour Provider fails to cooperate with GLA officers, it may result in unnecessary delay or refusal to grant a licence.
- **Compliance Inspection:** for GLA Licence holders. The Authority will use risk-based techniques coupled with a random element, to call for a Compliance Inspection. If a Labour Provider fails to cooperate with GLA officers, it may be considered as obstruction, which is a criminal offence.

Either type of Inspection will be made by a Compliance Officer of the GLA, but occasionally the GLA may sub-contract it to an accredited external agent.

During an inspection, the Labour Provider will be asked to give details of any current contracts. The GLA will then choose to interview a proportionate sample of workers under those contracts and the inspection will proceed based on workers' responses and any other relevant factors that come to light.

Also, the Labour Provider will be asked to provide proof of compliance with Licence Standards by producing documentary proof, such as records, terms of employment, wages books etc.

The Labour Provider will be told whether the inspection has been considered successful or what, if any, measures need to be put right in case of non-compliance. In some cases, additional licensing conditions may be imposed, requiring improvement within set timescales, dependant on the severity of the identified non-compliance(s), in order to ensure future, continuing compliance.

## **5. Non-Compliance with the Licensing Standards**

### **General**

For the purposes of Compliance Inspections, four categories of non-compliance will be used:

- Critical
- Major
- Reportable
- Correctable

Where appropriate, all but correctable non-compliances may be notified to the relevant agency for their further action.

A score marking system will be applied to identified non-compliances according to their seriousness as defined by the above categories. Critical non-compliances, and those where maximum points score occurs, will fail the inspection. The same system applies to new applicants or existing licence holders.

To assist in a proportionate approach to the continuous improvement and increase in compliance of the industry the GLA will determine whether to exclude, or include in future years, lower levels of non-compliance (i.e. Reportable and Correctable) in decisions on whether an inspection has been failed.

### **New Licence Applicant or Existing Licence Holders**

A licence will be refused to any first time applicant who fails to meet satisfactorily the Licensing Standards. A report will be issued outlining the reasons for the refusal and what steps ought to be taken for a successful application.

Where the applicant has no non-compliances or the identified non-compliances are insufficient for a licence to be refused, a licence will be issued, subject to additional conditions which will seek to correct any shortcomings for the future. A time-limit will be set for the non-compliances to be corrected.

Application fees are not refundable and apply to each application or re-application.

### **Licence Holders**

For someone already holding a licence, the inspection process is the same as for new applicants. For a licence holder whose non-compliances are found to be critical, or which in total exceed the permitted score, the licence can be revoked, immediately or in writing from a given date. For licence holders with less severe non-compliances a notice of Additional Licence Conditions, with time for improvement, may be issued. The issue of additional licence conditions will increase the likelihood of a further compliance inspection.



## **New Businesses**

Clearly it is more difficult for a new business to show compliance with the Licensing Standards in full. A new business will be expected to show systems in place which demonstrate the ability to conform with each section.

New businesses will not be dealt with disadvantageously, but the GLA reserves the right to inspect at an early date subsequently to see that it is compliant as an established business.

## **Licence Standards Scoring**

The scores for each category of non-compliance are set out below. They are used to determine whether a Labour Provider has passed or failed an inspection. This result will inform decisions on whether to refuse a licence, or revoke an existing licence.

Fail Score:	30
Critical:	30
Major	8
Reportable	4
Correctable	2

Although the GLA may not initially include scores for lower levels of non-compliance (i.e. reportable and correctable) in decisions whether an inspection has been failed, the scores for those non-compliances will nonetheless be counted towards a Risk Rating Score for Licensed Labour Providers. This score assists the GLA in identifying when, and which, Labour Providers, may require a Compliance Inspection.

## **Effects of Refusal or Revocation of a Licence:**

- If a licence is refused on first application, the applicant cannot trade as a Labour provider (once the criminal offences have been introduced in Autumn 2006);
- If the licence is revoked, the licence holder will be informed whether trading may continue for a certain period (usually until the outcome of any appeal is determined) or whether he should cease trading immediately.

## **Right of Appeal:**

- There is a right of appeal where a licence is refused or revoked.

## **6. Area Covered by the GLA Licensing Standards**

The following areas are covered by the GLA Licensing Standards:

1. Possession of a valid GLA Licence
2. Payment of Wages, improper deductions and allied matters
3. Debt bondage, harsh treatment or intimidation of workers
4. Workers' Accommodation
5. Hours worked, EU working Regulations
6. Breaches in Health and Safety
7. Recruitment and Contractual Arrangements
8. Sub-contracting
9. Identity issues and Age
10. Legality and rights of workers

### Appendix 1: Record Keeping

There is a brief introductory note for each category.

The categories are as follows:

- Critical
- Major
- Reportable
- Correctable

Issues arising from Critical, Major and Reportable may be passed on to other agencies are indicated.

A pass or fail or the imposition of additional licensing conditions will be determined by the severity of the non-compliances. This will apply equally to new applicants and existing licence holders.

## **7. Reporting Non-Compliances to Other Relevant Bodies**

Where non-compliances in the critical, major or reportable categories are discovered during the course of an inspection, and, in the opinion of the GLA, are not being properly addressed, the GLA will contact the appropriate government department or agency for their further action.

This particularly applies to evidence of:

- Any lack of proper business systems in place to demonstrate the payment of NI, Tax and VAT;
- Individuals who do not have the right to work in the UK
- Evidence of fraud or criminal activity of any kind
- Mistreatment or exploitation of workers in any way
- Any dangerous practices
- Breaches of Health and Safety issues



## The GLA Licensing Standards

This section sets out the detail of the GLA Licensing Standards. The symbols indicate the category of non-compliance and what is expected to demonstrate compliance.

It is expected that Labour providers will comply with Licensing Standards. Additional Licensing Conditions may be imposed by the GLA to correct or assure continued compliance, where non-compliance is evident.

Nonetheless, application of the Licensing Conditions will be aimed at identifying the more persistent exploitation of workers rather than concentrating on the isolated occurrence of non-compliance.

### Categories of Non-Compliance

<b>C: Critical:</b>	Most serious category of non-compliance
<b>M: Major:</b>	Major non-compliances, but less than critical
<b>R: Reportable:</b>	Significant non-compliances which may be reported to other Government Departments or Agencies
<b>Correctable (Co):</b>	Less severe non-compliances than the above

**Note:** Data from Inspections will be used along with other sources available, especially from other government Departments (OGD), to assess compliance with the GLA Licensing Standards.

## Section 1: Possession of a valid GLA issued Licence to operate as a Gangmaster

**Comment:** The Labour Provider must be licensed by the Gangmasters Licensing Authority to act as a gangmaster (Labour Provider) providing labour in the industries covered by the legislation – agriculture, horticulture, fish processing, gathering shellfish, dairy farming or packaging or processing of these products. The Act (section 4) defines the term “gangmaster” in more detail.

Further, he must notify changes affecting the licence details. Changes of personal details (including convictions), change of address, names on the licence, directors etc. must be reported to the GLA within 20 working days.

Persons acting as a “Gangmaster” within the meaning of the Act (Reg 12) must also be a “fit and proper person”. “Fit and proper” is defined as:

.. any individual or organisation operating as a labour provider in the licensable sectors covered by the Act, which meets the requirements of the GLA. To be classed as “fit and proper”, the individual or organisation must comply with the licensing conditions in the Rules and any obligations imposed by other legislation which relate to or affect the conduct of the licence holder. The conditions to be complied with are set in the Licensing Standards, which accompanies the licensing scheme.

The Principal Authority responsible for his members of staff must not have been the subject of relevant convictions for offences connected to labour provider activities covered by the Licensing Standards, particularly where those offences relate to victimisation, harassment and violence towards workers. These offences may be a bar to receiving a licence. The GLA may also consider other information where this brought to attention of the GLA, and independent investigation by the GLA identifies activities that result in the individual or organisation being considered unfit to hold a licence.

### An inspection will seek to assure that:

**1.1** **C** A current GLA Licence to operate as a gangmaster under the GLA 2004 is in issue (*NB: This applies to post licence decision holders and their sub-contractors only, not new applicants*) and the licence holder is or remains “fit and proper” to hold it.

**1.2** **Co** Licence Details are up to date with all relevant changes of circumstances notified within proper time scales.

## **Section 2: Payment of Wages, Tax, NI, VAT: improper deductions and allied matters**

**Comment:** There must be proper schemes to collect National Insurance (NI), Income Tax and VAT and proper records to show that the Labour Provider has accounted to the relevant statutory authorities for all NI and Income Tax deductions, all Employers' NI contributions and all VAT charged. Documents must be properly maintained and retained. There must not be any deductions made other than statutory deductions from a worker's pay without his express, written permission. The Labour Provider must provide proper, complete and accurate wage slips.

The Labour Provider must pay at least the minimum wage for the job and pay any benefits to which the employee is entitled.

**An inspection will seek to assure that:**

### **2.1 Proper systems are in place for the collection of Tax/NI/VAT**

**2.1.1 M** There is evidence that the labour provider is registered as an employer with the HM Revenue and Customs and has a PAYE number.

**2.1.2 M** Deductions from workers' pay of income tax and NI are accurate, appropriate and paid over to HMRC.

**2.1.3 R** If the business exceeds the VAT threshold, there is documentary evidence that it is registered with HMRC and charges and pays VAT.

### **2.2 Improper deductions / Withholding of wages**

**2.2.1 Co** There is evidence that the LP has an accurate payroll system in place whether in a paper or electronic form.

**2.2.2 M** Where deductions from wages, other than those legally required, are made eg for transport, there is evidence on file of workers' written consent to those deductions.

**2.2.3 M** The labour provider has not withheld or threatened to withhold payment to any worker on the following grounds:

- Non-receipt of payment from the labour user
- The worker failing to prove that he has worked during a particular period of time (although the licence holder can satisfy himself that the worker did carry out the work using other means)
- The worker only having worked during the period to which the payment relates
- Any matter within the control of the labour provider

### **2.3 Minimum wage in payment**

**C** The worker is paid consistently at least the appropriate minimum wage.

### **2.4 Benefits paid (eg sick pay, paid annual leave entitlement)**

**M** There is evidence that all workers receive paid annual leave entitlement, and any of the other benefits they are entitled to. Records of any paid annual leave entitlement, statutory sick pay, statutory paternity pay, statutory maternity pay and statutory adoption pay are kept on workers' files.

### **2.5 Wage slips provided**

**M** There is evidence that workers have been provided with itemised accurate payslips for each pay period showing at least their income tax, NIC payments and other authorised deductions.



### Section 3: Debt bondage, harsh treatment or intimidation of workers

**Comment:** The GLA will take a very serious view of any evidence of abuse against workers in the following categories. Employment must be freely chosen and no-one must be retained against their will, whether or not there is a debt owing.

If a worker is loaned money by the labour provider to meet travel or other expenses in order to take up a position, they must be provided with details in writing of the amount loaned and the agreed repayment terms.

If loan repayments are deducted from worker's wages, they must give their written permission for this to be done.

#### An inspection will seek to assure that:

##### 3.1 Unfair Treatment

**C** Workers are not subjected to physical or mental mistreatment.

##### 3.2 Existence of any bonded debt: for travel, unearned wages, job transfer

**3.2.1 M** There are no debts to the Labour Provider that prevent a person freely seeking other employment.

**3.2.2 M** Any debts properly entered into, or agreed recoveries from wages, are in writing and do not seek to cover more than the amount agreed or the recoveries allowed.

**3.2.3 M** No worker is disadvantaged from taking up permanent employment by the imposition of a transfer fee other than that allowed in regulations (see app 2).

##### 3.3 Employment freely chosen

**M** That a person has freely chosen that employment and not because they were kept against their will and are free to leave their employment/job without incurring (or fear of incurring) a penalty.

##### 3.4 Passports / Identity not retained

**C** Workers are not required to surrender identity papers such as passports beyond initial illegal working checks (as required under Section 8 of the Asylum and Immigration Act 1996) for retention.

##### 3.5 Harassment, abuse, complaints procedures

**Comment:** Workers (including those whose first language is not English) should be aware of how to seek redress or make a complaint where there has been harassment. There should be no evidence that a Labour provider does not deal with such cases properly.

**Co** Disciplinary matters or complaints are properly dealt with by the Labour Provider.

## 3.6 Confidentiality

**Comment:** The Data protection Act as well as the Labour Provider's duty to safeguard workers' interests, requires careful handling of any confidential information. Generally the written consent of the worker must be obtained before passing on any personal information to others. Certain statutory bodies (including the GLA) have the power to ask for records, examine them or even retain them.

It cannot be made a condition of employment that they give that consent.

### **An inspection will seek to assure that:**

**3.6.1 R** A labour provider does not disclose information relating to a worker, without the prior consent of that worker, except:

- for the purposes of any legal proceedings (including arbitration)
- in the case of a worker who is a member of a professional body, to the professional body of which he is a member;
- for the purposes of apprehension or prosecution of offenders
- for the purposes of national security or
- as required by any other enactment of law

**3.6.2 Co** Data and records are kept under lock and key.

## Section 4: Workers' accommodation

**Comment:** Any accommodation provided or arranged by the Labour Provider should conform to current legislation. There should be no evidence of poor or overcrowded conditions or failure to conform to local housing regulations on Housing of Multiple Occupation.

A licence holder may not arrange for a worker to take up a position other than as a labour user's employee (within the meaning of section 230(1) of the Employment Rights Act 1996) if, in order to take up that position, the worker must occupy accommodation other than his home, unless:

- suitable accommodation will be available for the worker
- details have been provided to the worker, including the terms on which it is offered and any cost;
- suitable arrangements have been made for the worker to travel to such accommodation.

If a worker is under the age of 18, a labour provider may not arrange for him to any take up a position that will require him to live away from home unless the parent or guardian of the worker has consented.

Proof of safe accommodation should include production of such documents as: gas safety testing certificate and Portable Appliance Testing (PAT).

### An inspection will seek to assure that:

- 4.1** **M** No under-18s are made to stay away from home for work purposes.
- 4.2** **M** Where workers live in accommodation provided by the labour provider, they are allowed to find suitable alternative accommodation after giving agreed notice period.
- 4.3** **C** Where workers live in accommodation provided by the labour provider, it contains appropriate facilities (eg water, power, heating, bedding, sanitation) and is safe for its inhabitants. There should be no evidence that the room and space standards set out in the Housing Act 1985 are breached or there is evidence of misuse of Houses of Multiple Occupancy (HMO)

## **Section 5: Hours worked, Working Time Regulations, etc**

**Comment:** An accurate record of hours worked by workers must be kept and made available for inspection. An opt out of the Working Time Regulations 1998 (as amended) must be a free choice by the worker and substantiated by a written, signed agreement. There must be no evidence that workers are being exploited as a consequence of failure to observe these provisions.

The Labour Provider must allow workers to take the breaks to which they are entitled during the working day.

### **An inspection will seek to assure that:**

- 5.1**    **M** Workers are allowed to take statutory breaks.
- 5.2**    **M** There is evidence that any workers working in excess of 48 hours per week have freely signed an opt-out.

## **Section 6: Breaches in Health and Safety, including training**

**Comment:** Health and Safety legislation is complex but forms an essential element of working conditions. The GLA will expect high standards in conformity with this area. No worker should be at risk at work. This extends to transport arrangements and the place of work.

It is particularly important that the proper Health and Safety training is given to workers and that the labour provider clearly agrees in writing whose responsibility it is to train staff, by written agreement. Workers should be able to confirm that they received the Health and Safety and understood it. No charge must be made for training.

Any vehicles used by the Labour Provider (or a recruitment agency) to transport workers to and from their place of work must be roadworthy, legal and driven only by drivers holding appropriate licences.

### **An inspection will seek to assure that:**

#### **6.1 Proper Health and Safety controls are in place:**

**6.1.1 M** The Labour Provider has taken steps to ensure that Health and safety risks to workers are properly controlled.

**6.1.2 Co** There are copies of adequate and suitable risk assessments covering workers on file.

#### **6.2 Confirmation of what training has been given and who gave it (LP/LU)**

**6.2.1 M** Responsibility for managing the health and safety training of workers has been clearly assigned either to the Labour Provider or the Labour User and workers have received the health and safety induction training for the site at which they are working.

**6.2.2 R** No charge is made for training and any time spent in training is paid for at least at the relevant national minimum wage.

#### **6.3 Safe place of work**

**6.3.1 M** The Labour Provider has not allowed workers to work in conditions giving rise to a serious risk of personal injury or ill health.

**6.3.2 M** Where necessary for their work, the Labour provider ensures proper protective clothing is provided to the workers he supplies. There should be proper access to sanitary toilets, water, food etc and adequate first aid provision at the place of work.

#### **6.4 Transport arrangements**

**6.4.1 M** Evidence that Drivers or workers operating vehicles, machinery or plants are not under age and have valid licences or certificates.

**6.4.2 C** Labour Providers' Vehicles are not in clear need of repair/maintenance or with serious safety defects identifiable.

**6.4.3 R** There is documentary evidence that all vehicles used by LP for transporting workers are registered with the DVLA, have a valid vehicle licence (tax disc), MOT certificate (if required) and insurance.

**6.4.4 R** There are records of all drivers including their names, driving licence number and type.

**6.4.5 M** There is documentary evidence that 8-seater (and over) vehicles are registered as Public Service Vehicles (PSV) and that drivers have Passenger Carrying Vehicle (PCV) entitlement.

## Section 7: Recruitment and Contractual Arrangements

**Comment:** Recruitment must be fair and open and non discriminatory in accordance with UK legislation.

There must be written terms of engagement whether a contract of employment or a contract for services with workers and these must not be changed without their written consent. Workers should understand the terms on which they have been taken on.

**An inspection will seek to assure that:**

### 7.1 Recruitment:

**7.1.1 R** Applicants for employment are not discriminated against when employment is offered.

**7.1.2 Co** A labour provider will not have supplied a worker to a labour user unless they have confirmed:

- The identity of the worker;
- That the worker has the experience, training, qualifications and any authorisation which the labour provider or labour user considers are necessary, or which are required by law or by any professional body;
- The worker is willing to work in the position which the labour user seeks to fill;
- Workers are not charged a finders fee for finding them work.

### 7.2 Terms and Conditions

**Comment:** Terms and conditions should be in a format that can be easily read and understood and workers are should be given the opportunity to raise concerns or queries in relation to those terms before being supplied to a labour user.

**7.2.1 M** There is evidence that all workers who have been employed continuously for one month or more under a contract of employment have a written statement of employment particulars. Or, if workers are engaged under contracts for services, there is evidence that, that these are agreed and provided to the workers before work commences.

The terms that must be agreed include:

- Whether the worker is or will be supplied by the licence holder under a contract of employment , or for services, and the terms and conditions that will apply;
- An undertaking to pay the worker for any work carried out regardless of whether the labour provider has been paid by the labour user;
- The length of termination the worker is required to give and entitled to receive, if any;
- Either the worker's pay rate, or the minimum rate to be expected;
- The intervals at which the earnings will be paid; and details of any entitlement to paid holidays, SSP and other benefits.

**7.2.2 M** There are no changes made either to contracts of employment or contracts for service without written consent by the employee.



## Section 8: Sub-contracting

**Comment:** A Labour Provider who sub-contracts becomes a Labour User for the purposes of the Gangmasters (Licensing) Act and must ensure that the sub-contractor he engages is licensed by the GLA.

See Appendix 1 (Record Keeping) for other details.

### An inspection will seek to assure that:

- |   |
|---|
| <p><b>8.1</b> <b>C</b> Any Subcontractors used must be properly and currently licensed by the GLA</p> |
|---|
- 8.2** **M** The names and details of any sub-contractor(s) used are recorded as well as details of workers provided and the number of hours worked by them.
- 8.3** **Co** There is documentary evidence of a contract between the labour provider and all sub-contractors

## **Section 9: Identity issues, Under-Age Working**

**Comment:** The Identity of all employees must be known to the labour provider and verified. Proper records must be maintained which identify each worker and the hours they work. The Labour provider must ensure that those workers supplied can be identified by the labour user.

The law prohibits under-age working. Any offences identified will be treated very seriously and passed on to the relevant Authorities.

**An inspection will seek to assure that:**

### **9.1 Identity Issues**

**9.1.1 M** Records on workers' files include their name, date of birth, address, NI number, and documentation showing their entitlement to work in the UK.

**9.1.2 M** Accurate records are kept of days and hours worked for all workers.

### **9.2 Proof of age (underage working)**

**9.2.1 M** Details of any work activities, including times and dates worked, carried out by children and young workers are held on file.

**9.2.2 R** There are copies of adequate and suitable risk assessments available where young persons are employed.

**9.2.3 M** Children and/or young persons are only carrying out work permitted by law.

**9.2.4 R** There is written evidence of Local Authority and parents' consent to employment for workers between the ages of 13 and minimum school leaving age.

## **Section 10: Legality and Rights of workers**

**Comment:** Only those who are legally able to work may be employed. It is essential that Labour Providers ensure that proper records are kept and checks made in line with Home Office guidance.

Labour Providers must respect a worker's right to belong to a Trade Union and to participate in its activities.

**An inspection will seek to assure that:**

### **10.1 Legality of Workers (section 10), Section 8 of the Asylum and Immigration Act 1996 fulfilled**

**10.1.1 M** All workers are legally entitled to work in the UK. Employers will be required to show they have complied fully with Section 8 for any worker aged 16 or over who is subject to immigration control.

Compliance is effectively demonstrated by the production of copies of supporting documentation that confirms a person's entitlement to work in the UK, as per Section 8(2)(b) of the legislation. (Copies means a photocopy or recording of the document electronically).

**10.1.2 R** There should be no evidence of student workers attending courses within the UK working in excess of 20 hours per week during term time (there are no restrictions outside of their term time).



## Appendix 1: Additional Requirements, Record Keeping

**Comment:** The Licence Conditions attached to the main Gangmasters (Licensing) Act 2004 requires in addition to the above provisions, that Labour Provider keeps the following records. These are appended for information. It is expected that Labour Providers will adhere to them. Most are included in the main body of the Licensing Standards.

Any shortcomings in this section alone will not count towards the scoring of errors as part of any inspection, unless they appear in the main body of the Licensing Standards above.

1. Every labour provider must record, as soon as reasonably practicable, the following details in relation to every application received from a worker:
  - the date application is received;
  - the worker's name, address and date of birth;
  - any terms which apply or will apply between the licence holder and the worker, and any document recording any variation;
  - any details of the worker's training, experience or qualifications and any authorisation to undertake particular work (and copies of any documentary evidence of the same obtained by the labour provider);
  - details of any requirements specified by the worker in relation to taking up employment;
  - the names of labour users or sub-contractors to whom the worker is supplied;
  - details of any resulting engagement and the date from which it takes effect;
  - the date the contract was terminated (where applicable); and
  - details of any enquiries made about the worker and the position concerned with copies of all relevant documents
  
2. Every licence holder must record, as soon as reasonably practicable, the following details relating to labour users:
  - the date the application is received;
  - the labour user's name and address, and location of the place of work if different;
  - details of any sub-contractors;
  - details of the position(s) the labour user seeks to fill;
  - the duration or likely duration of the work;
  - any experience, training, ability, qualifications, and authorisation required by the licence holder or labour user by law, or by any professional body; and any other conditions attaching to the position(s) the labour user seeks to fill;
  - the terms offered in respect of the position(s) the labour user seeks to fill;
  - a copy of the terms between the licence holder and the labour user, and any document recording any variation;
  - the names of workers supplied;
  - details of enquiries about the labour user and the position he seeks to fill, with copies of all relevant documents and dates of their receipt;
  - the details of each resulting engagement and date from which it takes effect; and
  - dates of requests by the labour provider for fees or other payment from the labour user and of receipt of such fees or other payments, and copies of statements or invoices.

3. Every labour provider must record, as soon as reasonably practicable, the following details relating to other labour providers:
- names of any other licence holders whose services the licence holder uses, and details of enquiries made to ascertain that the other licence holder is licensed;
  - date and copy of any agreement to sub-contract.
  - These records must be kept for at least one year. The records may be kept at any premises a labour provider uses for or in connection with the carrying on of his business, or elsewhere. If kept elsewhere the licence holder must ensure that they are readily accessible and capable of being delivered to the licence holder's premises within two working days. All records may be kept in written or electronic form.



## **Appendix 2: Effect of Conduct Regulations**

### **Restriction on providing workers in an official industrial dispute – regulation 7**

An employment business must not supply a worker to carry out the duties of a worker involved in an official industrial dispute or to perform the duties of any other worker employed by the hirer who has replaced the worker on strike. However, this provision will not apply if the employment business was unaware that the hirer's worker was involved in the dispute.

### **Restriction charging fees to hirers – regulation 10**

For a term in a contract between an employment business and a hirer, which entitles the employment business to charge a transfer fee if the temporary worker is either directly employed by the hirer or supplied to the hirer through another employment business, to be enforceable certain conditions must apply. The contract must provide that, instead of a transfer fee, the hirer can give notice to engage that temporary worker for a specified period of hire. During this specified hire period if there has been no supply, the terms set out in the contract will apply, otherwise the terms will be no less favourable to the hirer than those which applied before the notice was received by the employment business. The transfer fee term will also be unenforceable where the employment business does not then supply the worker to the hirer for the extended period, unless the employment business is not at fault.

### **Relevant period**

There is also a limit on the time during which certain terms in a contract can be enforced. These terms apply to work-seekers taking up employment with the hirer, or with any person to whom the hirer has introduced them; or working for the hirer having been supplied by a different employment business. These are often referred to as "temp-to-perm", "temp-to-third party", or "temp-to-temp" transfers respectively. Any such term is unenforceable by the employment business where the worker begins that employment or is supplied by another employment business after the end of the relevant period. The "relevant period" is whichever of the following periods ends later:

- (i) 8 weeks starting from the day after the day on which the worker last worked for the hirer having been supplied by the employment business; or
- (ii) 14 weeks beginning from the first day on which the worker worked for the hirer having been supplied by the employment business. The relevant period to apply will, therefore, be determined by the length of the hire period.

**Example 1:** The hire begins on 2 August 2004, ends on 6 August 2004, and lasted for 1 week:

8 weeks after the end of the hire period is 1 October 2004, 14 weeks from the first day of work is 8 November 2004. The relevant period therefore ends on the later date – 8 November 2004.

**Example 2:** The hire begins on 2 August 2004, ends on 6 September 2004, and lasted for 5 weeks + 3 days:



8 weeks from the end of the hire period is 4 November 2004,  
14 weeks from the first day of work is 8 November 2004.  
The relevant period therefore ends on the later date – 8 November 2004.

**Example 3:** The hire begins on 2 August 2004, ends on 13 September 2004, and lasted for 6 weeks + 1 day:

8 weeks from the end of the hire period is 9 November 2004,  
14 weeks from the first day of work is 8 November 2004.  
The relevant period therefore ends on the later date – 9 November 2004. If the hire period lasts for more than 6 weeks, the relevant period will end 8 weeks after the last day of the hire.

When determining the first day on which the worker was supplied to the hirer by the employment business, any such spell of employment, which occurred prior to a period of 42 days during which that work-seeker did not work for that hirer having been supplied by that employment business, will not be included.

### **Entering into a contract on behalf of a client – regulation 11**

An employment business cannot enter into a contract with a hirer on behalf of a work-seeker or on behalf of the hirer with the work-seeker. Similar restrictions apply to an agency, unless the person for whom it acts has given permission for the agency to act on his behalf. Where the agency acts for the work-seeker, it must be allowed by regulation 26(1) (see page 16) to charge a fee for the work-finding services covered by the contract. Furthermore, it must inform its client, and the other party to the contract, of the terms of the contract within five business days of the agency entering into that contract. However, when agreeing the terms of a contract an agency cannot act on behalf of both the work seeker and the hirer.

### **Requirement to obtain agreement to terms with hirers – regulation 17**

Apart from the provision of information in a publication, before providing services to a hirer, the agency/employment business and the hirer must agree the terms that will apply, including information on:

- (a) whether the service will be as an agency or employment business;
- (b) any fee payable by the hirer, the amount or method of its calculation, and the circumstances of any refund, or a statement if no refund is payable;
- (c) procedure to be followed if the work-seeker supplied by the employment business proves unsatisfactory;
- (d) agency's authority and terms (in accordance with regulation 11), if any, it has to represent the hirer in negotiations with work-seekers. All the terms must be recorded in a single document.

(Note: If the terms comprise more than one item, they should be retained as a single document). If the hirer does not have a copy of the document, or details of any variation of the terms, the agency/employment business should provide a copy of the relevant document as soon as practicable.

### **Civil liability – regulation 30**

If an employment agency or employment business fails to comply with any of the provisions of either the 1973 Act or the Conduct Regulations, which causes damage or loss to another person, that person can sue the agency or employment business for damages arising from a breach of the legislation. The term "damage" in this regulation includes the death of, or injury to, any person (including any disease and any impairment of that person's physical or mental condition).

