



GLA Brief

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How Licensing Applies to
Businesses Based Outside the UK

This Brief explains how licensing affects businesses based outside the UK as well as the labour providers and labour users who use such businesses. This guidance supersedes GLA Briefs 16 and 17 and is in force with immediate effect.

Introduction

This guidance explains how the Gangmasters Licensing Authority's (GLA) licensing scheme applies to businesses based outside the United Kingdom (UK). The GLA is the UK Government body responsible for licensing businesses supplying workers to the UK agriculture, horticulture, shellfish gathering and food processing and packaging sectors.

This Brief is intended as a general guide. We recommend you contact the GLA for specific advice if you are unsure of what this guidance means for you.

Do businesses based outside the UK need to be licensed by the GLA?

Anyone, whether an individual or a business, involved in the supply of workers to the sector regulated by the GLA who is not directly employed by an existing GLA licence holder must be licensed in their own right. That means anyone based outside the UK, will need a licence if they supply workers direct to an end user or to another labour provider trading in the GLA sectors.

The UK includes England, Scotland, Wales and Northern Ireland.

What does supply mean?

Supply has a wide meaning and includes:

- introducing workers in any way to a labour provider or labour user for work in the GLA sectors,
- sourcing workers and forwarding them to a UK client for work in the GLA sectors (for example, by sending CVs or completed application forms), and

- any kind of screening of candidates for work in the GLA sectors, even if the end client makes the final decision to employ the worker.

This definition applies equally to businesses based in or outside the UK.

It does not matter whether the workers are self-employed, agency workers or employees. Supplying any kind of workers to the GLA sector, regardless of their employment status, means a licence is needed.

Do “Agents” or “Intermediaries” need to be licensed?

It does not matter how a business describes itself, if it undertakes any of the activities listed above, then it must have a GLA licence.

How to apply for a licence

Full guidance on how to apply is on the GLA’s [website](#) or you can request a hardcopy by ringing us. In addition to the normal application process, businesses based overseas will be required to:

- Send us any documents we request to support your application. This will include evidence of ID for the person who will be the Principal Authority, sample contracts with workers and clients and evidence of compliance with the law in the country you are based – this is typically details of any licence or registration held.
- Go through our application inspection process. This involves attending an interview in the UK, generally at or near a convenient location. During this interview, you will be asked questions testing whether the business complies, or will comply, with the GLA’s Licensing Standards.

If you are based outside the UK and need to apply for a licence, please ring the GLA helpline on +44 (0) 845 602 5020 or apply online at www.gla.gov.uk

When an application for a licence is received from an overseas business the GLA will contact the labour inspectorate, or its equivalent, and any other appropriate authority (i.e. tax authorities) to confirm that the company is compliant with the domestic law of that country. The GLA will use any overseas registration information provided on the application form to assist this process. The purpose of the process is to ensure that, as far as is possible, the GLA obtains the equivalent information to that which it receives from UK Government Departments with regard to UK applicants. Information sought will include whether the company has ever been sanctioned, and if so in what way, and for what offences or breaches.

What are the conditions of a GLA licence?

We require applicants and licence holders to comply with the GLA’s Licensing Standards. The Standards are available on the GLA [website](#) or you can request a copy by ringing our helpline. Usually, the most relevant Standard for businesses based outside the UK will be Licensing Standard 7.1 which covers fees and providing additional services.

This Standard prohibits charging workers a fee for work-finding services. Even if charging is legal in the Applicant's home country, as the work being done will be in the UK, workers must not be charged for work-finding services. This is a critical standard and any non-compliance would lead to an application being refused or a licence being revoked.

This Standard also prohibits work-finding services being conditional on the worker using other services or hiring or buying goods from the business or any person connected to them.

If a business provides other services and then charges the worker, then we would check that the services offered were genuinely optional. These services might include helping complete application forms and arranging travel and accommodation. If we find that the use of these services is mandatory for someone to have a job, then this Standard will be failed. Further information is provided in [GLA Brief 38](#).

How the GLA checks compliance

Licence holders must comply with the GLA Licensing Standards at all times. If we believe a licence holder is no longer compliant with our Standards, we may conduct a compliance inspection. The principal authority for the business will be required to travel to the UK to be interviewed. We will also interview the workers supplied by that licence holder to check how they were recruited, even if the licence holder doesn't have an ongoing relationship with the worker. Further checks may also be conducted with overseas labour inspectorates. This may result in an inspection in that country by the labour inspectorate under its powers if it thinks that there may be breaches of its domestic legislation.

Bulgarian and Romanian nationals

The restrictions on the employment of nationals from Bulgaria and Romania ended in December 2013. UK Labour Providers are free to employ nationals of those countries. Companies based in those countries may also supply workers directly to labour users, or sub-contract their services to UK labour providers. However, any Bulgarian or Romanian business that supplies workers to GLA regulated sectors must hold a licence, and be compliant with the GLA's licensing standards.

Employing Croatian nationals

On 1 July 2013 Croatia joined the EU. The UK introduced restrictions on the circumstances in which a Croatian national can work in the UK. These are introduced to UK legislation through the Accession of Croatia (Immigration and Worker Authorisation) Regulations 2013. In July 2015 the UK Government will be expected to notify the EU if it intends to extend the current restrictions on employment of Croatian nationals.

Workers from Croatia will normally be expected to hold the appropriate accession registration card. It is an offence to employ a Croatian national who requires an accession card, but does not hold one. There are exemptions from the requirement to hold an accession card. Full guidance on the employment of Croatians can be found at Gov.uk here: <https://www.gov.uk/government/publications/guidance-for-employers-employing-a-croatian-national-in-the-uk>

Apart from the exemptions set out in the above document posted workers from Croatia also do not need to hold an accession card. If Croatian workers are identified as being supplied by a person or company that is required to hold a GLA licence the GLA will establish whether the workers are legitimately posted workers from Croatia. Further guidance on the GLA's approach to posted workers is provided below.

Posted Workers

A "posted worker" is a person who, for a limited period of time, carries out work in an EU Member State other than the State in which they normally work. The workers must be given the same key terms and conditions as all other workers in the UK, including the minimum wage. A worker can only be regarded as posted if an ongoing relationship exists between the worker and the employer in the country of origin, including wages being paid.

Any business based outside the UK which is supplying workers to the GLA regulated sectors under the Posting of Workers Directive must be licensed by the GLA. They should also comply with any requirements which apply in the posting country. The GLA will check the businesses compliance in this regard when considering if the business is "fit and proper" to hold a licence.

There are special social security rules for people moving around the EU and their employers. An employer in another EU Member state must pay employer National Insurance as if they are in the UK and they must deduct UK National Insurance from their employees' wages. The only exception is where the worker and employer are exempt under EU Regulations and have a valid A1 or E101 Certificate to show that they are still subject to the social security legislation of the sending Member state. This certificate confirms that the equivalent of national insurance contributions is being paid in the exporting country. The GLA will check that the workers have the certificate.

You can find out more about these rules on HMRC's website: <https://www.gov.uk/tax-come-to-uk>

All businesses who apply for a GLA licence must make sure the workers comply with any relevant home regulations and have valid E101 certificates. This enables the GLA to make appropriate licensing decisions with assurance that the overseas business is compliant with regulations which are comparable with the licensing standards.

Businesses based outside the European Economic Area (EEA)

The UK's compulsory social insurance is the National Insurance contribution. Please be aware, if a licence holder is based outside the EEA and does not pay Employer's National Insurance contributions (NICs) and deduct Employee NICs from the workers, HM Revenue and Customs may hold that your client in the UK: the company or person to whom you supply the workers, is liable for paying NICs and is responsible for deducting Employee NICs from the workers. You can find out more about these rules on HMRC's website: <https://www.gov.uk/new-employee-coming-to-work-from-abroad>

Offences

The Gangmasters (Licensing) Act 2004 includes a number of criminal offences that apply to both labour providers and labour users.

Within the [GLA regulated sector](#) it is illegal to:

- Operate as a gangmaster without a licence
- Enter into an agreement with an unlicensed gangmaster

The maximum penalty for operating without a licence is 10 years in prison and a fine.

Labour users must only use workers supplied by a licensed labour provider for roles in the GLA sector. The maximum penalty for using an unlicensed gangmaster is six months in prison and a fine.

- It is an offence for a person to possess a document - either false, improperly obtained or belonging to someone else - with the intention of inducing someone to believe he, or someone else, is licensed by the GLA.
- It is also an offence to obstruct a GLA officer in the course of their duties.

Shellfish gathering

If you use workers to gather shellfish you will also need a licence and you will be considered a gangmaster in this sector. The penalty is up to 10 years in prison and a fine if you operate without a licence. More information is available on the GLA's [shellfish gathering](#) page.

Further information

1. If you any questions about this Brief, please contact the GLA helpline on 0345 602 5020 or email licensing@gla.gsi.gov.uk.
2. For the latest news and updates from the GLA:



Twitter: [@UK_Gla](#)



facebook: www.facebook.com/GangmastersLicensingAuthority

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