

Guidance on the steps that a labour user can take to ensure a labour provider is licensed





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1. Introduction

- 1.1 From 1 December 2006 a labour user who makes arrangements with, and has workers supplied by, a labour provider who is not licensed, commits an offence under section 13 of the Gangmasters (Licensing) Act 2004.
- 1.2 This guidance explains the steps that a labour user can take to establish that a labour provider is licensed. These steps are not obligatory. However, in any proceedings against a labour user, it is a defence if the labour user can show that he / she has:
 - taken all **reasonable steps** to ascertain if the labour provider has a valid licence; and
 - did not know, and had no reasonable grounds to suspect, that the labour provider was not licensed.
- 1.3 All labour providers (including those based overseas) operating in the agriculture, associated processing and packaging sectors and in fish and fish product processing and packaging sectors must be licensed. It is an offence to operate without a licence. A licence authorises a business to act through authorised persons or postholders. Labour providers include employment agencies and businesses, suppliers of gang labour and, in certain circumstances occasional suppliers of labour to another person (see section 7).

2. Register of licences

- 2.1 The **Gangmasters Licensing Authority (GLA)** is required to keep a register of persons licensed under the Act. The register can be inspected at www.gla.gov.uk .
- 2.2 You can also contact the GLA to confirm register entries by telephone or by fax. Contact details are given in Section 8. You should arrange for a copy of the register entry to be sent to you.

3. Reasonable Steps

- 3.1 The following sets out the minimum checks that a labour user is advised to make to establish that a labour provider is licensed.



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Where reference is made to “keeping a copy”, you should either keep a printed copy or save an electronic copy of the document or record concerned. All records should be retained for a minimum of 1 year or until the contract ends if this is longer.

How to check that a business is licensed

- 3.2 Not more than 10 working days before the agreement with the labour provider is entered into you should:
- Check against the GLA’s register to see whether the business is licensed.
 - Note the names or job descriptions of the authorised persons or postholders.
 - Keep a copy of the register entry.
 - You should normally use the telephone number and / or the address given in the register to make initial contact with a labour provider.
 - Where a labour provider business has a number of branches you should use the telephone number of your local branch, given in the Telephone, Yellow Pages or similar directory. You should keep a copy of the telephone number, address and source.
 - If over the life of an agreement you have any doubts about the identity of the business you are dealing with you should contact the Principal Authority named on the GLA register using the telephone or address details shown and inform the GLA of your concerns.
 - If after making such further enquiries, you still have reason to doubt the identity of the business you are dealing with you should withdraw from the agreement and notify the GLA.

Where a labour provider contacts you

- 3.3 Where the labour provider initiates the contact, you should not take their assurance that they have a licence at face value. You should check the GLA register. You should also contact the Principal Authority named on the GLA register, using the telephone or address details shown, in order to satisfy yourself that the person or organisation that contacted you is licensed. You should make a record of all checks made and keep a copy.

Do not enter into an arrangement or continue an existing arrangement with a labour provider business which is not licensed. If you do you will commit a criminal offence. If at any time you have any doubts as to whether the labour provider has a valid licence, contact the GLA on 0845 602 5020.

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Ongoing contact with a labour provider

3.4 Once you have verified the status of the labour provider you might deal with a number of people in that business. However, when you are dealing with contractual matters (i.e. “doing the deal”) you must only deal with an authorised person or postholder. In this context you should ensure that:

- You can demonstrate that you have taken steps, which are appropriate (see box below) to the method of contact used, to minimise the risk that you are dealing with a person or postholder who is not authorised.
- If over the life of an agreement you have any doubts about the identity of the person or postholder you are dealing with you should contact the Principal Authority named on the GLA register using the telephone or address details shown.
- If having made further enquiries you have reason to doubt the identity of the person or postholder you are dealing with you should withdraw from the agreement and notify the GLA
- The documentation sent to you as required by the GLA’s Standard Licence Conditions comes from the licensed business and there is nothing to suggest that it has been prepared by or it originates from anyone other than an authorised person or postholder.
- Invoices can be identified as being for services rendered by the licensed labour provider business with which you entered into an arrangement.

The steps you should take to ensure you are dealing with the right person will vary from case to case and according to the way you communicate with the labour provider e.g. by telephone, in writing or face to face. You could for example:

- ask to speak to a named authorised person or postholder.
- ask the person you speak to to confirm his / her name or post.
- ensure that letters, email and other correspondence are addressed to an authorised person or postholder at the address of the licensed business.
- ensure that replies can be identified as coming from or have been originated and approved by an authorised person or postholder.
- ask to see an identity document (e.g. a driving licence) or a letter of appointment to an authorised post.



- 3.5 When dealing with the day to day administration of an existing contract or making initial enquires about establishing a new arrangement you can deal with anyone in the labour provider business.
- 3.6 If you have an arrangement with a labour provider which continues for more than 3 months, you should:
- check the GLA's register at 3 monthly intervals and keep a copy.

OR

- Register an interest in the labour provider with which the agreement has been made with the GLA "Active Check Service" (see page 10) and keep a copy of your registration.

Make sure that contractual arrangements are made only with a licensed business through an authorised person or postholder.



4. If a worker becomes your employee

- 4.1 If you use the services of a labour provider to recruit people who become your employees, you do not need to make any further GLA register checks **after** you have received the labour provider's invoice on completion of the recruitment service.

5. What to do if problems arise

5.1 **The contract documentation, letters / e-mails appear to originate from a business other than the licensed business with which the arrangement was made**

- You should contact the labour provider you have been dealing with and ask them to confirm whether or not they are providing the labour or whether it is being provided by a third party business. If the labour provider confirms that they are no longer providing the labour, terminate your arrangement with the business. You should also contact the GLA and inform them of the facts.

5.2 **The contractual letters / e-mails are from the licensed business but are not from an authorised person or postholder**

- Ask the labour provider whether they have requested a change to their register entry to include the person or postholder who contacted you. Then wait 25 working days and check the GLA register to see if there has been a change in the authorised persons or postholders since you last checked. Keep a copy. If the person or postholder with whom you are now dealing is still not shown on the register as an authorised person or postholder, terminate your arrangement with the business. You should also contact the GLA.

5.3 **The labour provider's licence has been revoked**

- If when you make a periodic check of the GLA register you find that your labour provider's business is no longer listed, or if you receive notification to this effect under the GLA's active check process, you should terminate your arrangement with that labour provider.

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5.4 The authorised person or postholder you deal with is no longer named on the licence

- If when you make a periodic check of the GLA register you find that the authorised person or postholder with whom you normally do business is no longer listed on the register entry for that business, or if you receive notification to this effect under the GLA's active check process, you should ensure that in future you deal on contractual matters with an authorised person or postholder currently shown on the register entry.

6. Queries about the legislation

- 6.1 If you have any queries about the legislation controlling labour providers, consult your legal adviser if you have one, your trade organisation, the Gangmasters Licensing Authority, Defra, or in Northern Ireland the Department of Agriculture and Rural Development. Contact details are given in Section 8.

7. Are there situations where a labour provider does not need a licence?

- 7.1 Labour providers need a licence if they provide workers to undertake specific kinds of work. However, in certain situations a labour provider is exempt and does not need to hold a licence. If you are unsure whether a labour provider needs a licence to provide workers to undertake the work you require, you should consult the information for Labour Providers on the GLA's website "Do I need a licence". If you want a hardcopy or would like the GLA to confirm if your labour provider needs a licence, you should contact the GLA by email or telephone.
- 7.2 You should also be aware that, in certain situations, service suppliers will need a licence. Labour supply businesses established by a machinery ring or other similar farmer led organisations may also need a licence. Again, advice is available on the GLA website www.gla.gov.uk.

8. Contact details

Defra

IBRF Division
Area 3A Ergon House
Horseferry Road
London SW1P 2AL
Telephone: 08459 33 55 77
Fax: 020 7238 6553
Email: helpline@defra.gsi.gov.uk

Northern Ireland Department of Agriculture and Rural Development

Dundonald House
Upper Newtownards Road
Belfast BT4 3SB
Telephone: 02890 524 873
Fax: 02890 524 266
Email: joyce.miskimmons@dardni.gov.uk

The Gangmasters Licensing Authority

PO Box 8538
Nottingham
NG8 9AF
Telephone: 0845 602 5020
Fax: 0115 900 8943
Email: enquiries@gla.gsi.gov.uk

GLA Active Check Service

If you would like to be notified when a specific labour provider loses his or her licence, or if the details of an authorised person or postholder change, you can register your interest in that labour provider with the GLA under its "active check" service. Further guidance is provided on the GLA website www.gla.gov.uk. This explains how this service operates and how it supports the reasonable steps provisions. Alternatively you can telephone the GLA. It is up to you to decide whether you use this service.

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