



Gangmasters  
Licensing Authority

# Licensing Standards

April 2009





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## Part One

### 1. Introduction

- 1.1. The Gangmasters Licensing Authority (GLA) was set up to protect workers from abuse in agriculture, forestry, horticulture, shellfish gathering and food processing and packaging. The GLA operates a licensing scheme for those acting as a “gangmaster”.
- 1.2. The GLA licensing standards set out the conditions that must be complied with in order to qualify for and retain a GLA licence. This document:
  - explains the GLA licensing scheme, and
  - identifies the specific areas that need to be complied with.
- 1.3. The standards comprise obligations contained in the Gangmasters (Licensing Conditions) Rules 2009 plus other relevant legal requirements.
- 1.4. This version of the licensing standards supersedes the version issued in October 2006 “Licensing Standards: Agriculture, Horticulture and Processing and Packaging for Food, Fish and Shellfish”.
- 1.5. If you need any advice or further guidance on the licensing standards, please contact the GLA:

Telephone: **+44 (0) 845 602 5020**

Email: **[enquiries@gla.gsi.gov.uk](mailto:enquiries@gla.gsi.gov.uk)**

## 2. Who Needs a Licence?

- 2.1. Section 4 of the Gangmasters (Licensing) Act 2004 defines the term "gangmaster". A "gangmaster" is an individual or business that:
- supplies labour to agriculture, horticulture, shellfish gathering and food processing and packaging, commonly referred to as a labour provider,
  - uses labour to provide a service in the regulated sector, for example harvesting or gathering agricultural produce, or
  - uses labour to gather shellfish.
- 2.2. The GLA takes a wide interpretation of the term "supply".
- 2.3. Someone is considered to be "using" labour if they employ the worker under a contract of employment or engage him or her under a contract for services. The GLA also considers someone "using" labour if they make arrangements with the worker that:
- require the worker to follow his or her instructions,
  - determine where, when or how the worker carries out the work, or
  - (for using workers to gather shellfish) require the worker to sell their gathered shellfish to them as the first link in the buying chain.
- 2.4. The above applies whether the licence holder makes these arrangements directly with a worker or makes them indirectly through another person (for example a supervisor, intermediary or agent). Any person making such arrangements should be named on the licence of the licence holder.
- 2.5. Labour includes all workers, whether temporary or permanent. If the work is undertaken in the UK, a licence is required regardless of where the business is located.
- 2.6. There are exemptions from the licensing scheme for some specific circumstances. Advice on these exclusions is available from the GLA helpline or [www.gla.gov.uk](http://www.gla.gov.uk).

### **3. How the Licensing Standards will be Applied**

- 3.1. The licensing standards will be applied on the basis of the type of business, for example whether the business provides temporary or permanent workers. This means that not all the licensing standards will apply to all applicants. Generally, if a worker is to be paid by the licence holder then they will be expected to meet most, if not all, of the standards. However, if you are not able to meet a standard because it is not appropriate for your business, you may still be granted a licence.
- 3.2. Further advice on how the licensing standards might apply to an individual business can be obtained from the GLA.

## 4. Assessing Compliance

- 4.1. The GLA adopts a proportionate approach when applying the licensing standards. The GLA is concerned with identifying the more persistent and systematic exploitation of workers rather than concentrating on isolated non-compliances, unless such a non-compliance is “critical” in its own right. The GLA will work closely with other government departments and agencies and exchange information through legal gateways. This forms part of the licensing process and assessment of compliance with the standards.
- 4.2. Compliance with the licensing standards is then assessed through inspections, which will be conducted either by a GLA officer or an approved external auditor. There are two types of inspection:
  - **application inspection** for all new applicants, and
  - **compliance inspection** for licence holders. Along with a random element, the GLA will risk assess which licence holders should undergo a compliance inspection.
- 4.3. If the licence holder fails to co-operate with GLA officers, it may be considered as obstruction, which is a criminal offence under section 18 of the Gangmasters (Licensing) Act 2004.
- 4.4. The inspection will test the relevant licensing standards, which will result in an overall score. The scoring system determines whether an applicant or licence holder has passed or failed an inspection. The fail score for inspection is 30 points. Standards designated as “critical” are worth 30 points. All other standards are worth 8 points, except licensing standard 1.4 which is worth 16 points.
- 4.5. For non-compliances against standards drawn from other legislation, the GLA will also notify the appropriate government department or agency which will decide its own enforcement action.

## 5. GLA Inspections

- 5.1. During an inspection, the applicant or licence holder may be asked to give details of any current contracts with labour users. The inspection may include visiting the labour users' premises to check the place of work. The GLA may also interview a sample of workers under those contracts and the inspection will proceed based on workers' responses and other relevant factors that may come to light.
- 5.2. The applicant or licence holder may be asked to provide documentary evidence (such as written terms and conditions with workers and clients, contracts, wage books etc) to demonstrate compliance with the licensing standards. The information collected will assist the GLA to determine whether a licence should be granted or refused for a licence application, or revoked for an existing licence holder.
- 5.3. 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 that it has systems in place that demonstrate its ability to conform to each section.
- 5.4. New businesses will not be dealt with disadvantageously, but the GLA reserves the right to carry out a second inspection at an early date after it has started supplying workers to ensure that it is compliant as an established business.
- 5.5. Employment Agencies and employment businesses that come within the scope of the licensing scheme, whether supplying temporary or permanent labour, will be tested against the licensing standards.
- 5.6. However, given that many may supply labour also to other sectors not covered by the licensing scheme, and may have been inspected under the Department for Business, Enterprise and Regulatory Reform (BERR) rules, the extent to which the inspection needs to be targeted by the GLA will be decided on a case-by-case basis.

## 6. Results of an Inspection

6.1. The applicant or licence holder will be informed whether the inspection has been considered successful or what, if any, measures need to be taken to rectify identified non-compliances. There are three possible outcomes:

■ **No issues identified**

For applicants, a licence will be granted. There would be no change for existing licence holders.

■ **Inspection score is below 30 points**

Additional licence conditions will be attached to the licence.

■ **Inspection score is 30 points or above**

The application will be refused or the licence will be revoked. The revocation will be with or without immediate effect depending on which standards are failed.

6.2. If an application is refused, the applicant must not trade in the licensable sectors. If a licence is revoked, the licence holder will be notified of whether trading may continue, usually until the outcome of any appeal is determined, or whether they should cease trading immediately.

## 7. Applying for a Licence

- 7.1. You can apply for your GLA licence online at [www.gla.gov.uk](http://www.gla.gov.uk) or by telephoning the GLA helpline on **+44 (0) 845 602 5020**.
- 7.2. Detailed advice is available in the GLA's "Application Form Guidance". Please ring the GLA helpline for a copy or download it from the GLA website.
- 7.3. The first stage of applying for a GLA licence is to complete our application form. The "Principal Authority", the person responsible for the day-to-day management of the business", is responsible for signing the declaration of the completed application form on behalf of the business.
- 7.4. If your annual turnover in the licensable sectors is below £5 million you will need to provide the names of staff who are authorised to negotiate the supply of workers. If your business has a greater annual turnover in the licensable sectors you can provide job titles instead.
- 7.5. Any information that you supply in connection with your GLA licence application will be processed in accordance with the Data Protection Act 1998. The GLA is the data controller for the purposes of this Act. Information you supply may be shared with other government departments and law enforcement agencies where it is necessary to carry out our functions and/or where the law permits.
- 7.6. Your application will usually be processed within 30 working days from when the fees payable for the licence and application inspection clear. During this time the GLA will run checks with other UK enforcement agencies and if required, authorities in other countries. You will also be inspected by the GLA. The GLA Licensing Team will then review the results of the inspection and other checks to decide whether a licence can be granted.
- 7.7. Once your application is approved, your licence will be valid for 12 months. We will contact you before the expiry date to remind you that your licence is due for renewal. You must renew your licence before your current one expires otherwise a new application must be made.

## 8. Costs of a Licence

- 8.1. New applicants will need to pay a licence fee and application inspection charge. Licence holders renewing only have to pay the licence fee. The current fees and charges are available online at [www.gla.gov.uk](http://www.gla.gov.uk) or by ringing the GLA helpline on **+44 (0) 845 602 5020**.
- 8.2. Fees and charges are payable whether your licence is granted or refused. Fees and charges will not be refunded.

## 9. Appealing Against a GLA Decision

9.1. There is a right of appeal against any decision of the GLA:

- to refuse an application for a licence,
- to attach conditions to a licence,
- to revoke a licence, or
- to refuse the transfer of a licence

9.2. Any decision the GLA makes will explain the process for making an appeal. Guidance on the appeals process is available from the Appeals Secretariat. The Secretariat can be contacted at:

- The Secretariat, Gangmasters Licensing Appeals  
Defra  
Electra Way  
Crewe  
Cheshire  
CW1 6GJ

Telephone: +44 (0) 1270 754 231  
Fax: +44 (0) 1270 754 260  
Email: [gangmasters.appeals@defra.gsi.gov.uk](mailto:gangmasters.appeals@defra.gsi.gov.uk)

9.3. In Northern Ireland, the Secretariat may be contacted at:

- Office of the Industrial Tribunals and the Fair Employment Tribunal  
Gangmasters Licensing Appeals  
Long Bridge House  
20-24 Waring Street  
Belfast  
BT1 2EB

Telephone: +44 (0) 2890 327 666  
Fax: +44 (0) 2890 230 184

## **10. Public Register**

- 10.1. Details of all licence holders and applicants will appear on the GLA public register, available online at [www.gla.gov.uk](http://www.gla.gov.uk).
- 10.2. A list of licence holders who have had their licence revoked is also available on the GLA website.

## 11. Penalties for Operating Without a Licence

- 11.1. The Gangmasters (Licensing) Act 2004 includes a number of criminal offences. It is illegal to:
- operate as a gangmaster without a licence, or
  - use an unlicensed gangmaster
- 11.2. The maximum penalty for operating without a licence is 10 years in prison and a fine.
- 11.3. The maximum penalty for using an unlicensed gangmaster is 6 months in prison and a fine.
- 11.4. It is an offence to hold:
- 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, or
  - 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.
- 11.5. It is also an offence to obstruct a GLA officer in the course of their duties.
- 11.6. The GLA enforces these criminal offences on behalf of the Department for Environment, Food and Rural Affairs (in Great Britain) and the Department of Agriculture and Rural Development (in Northern Ireland).

## 12. Complaints

12.1. If you are dissatisfied with the service you receive from the GLA, please write to:

- The Deputy Chief Executive  
Gangmasters Licensing Authority  
PO Box 8538  
Nottingham  
NG8 9AF

Email: [complaints@gla.gsi.gov.uk](mailto:complaints@gla.gsi.gov.uk)

## Part Two

### The GLA Licensing Standards

This section sets out the detail of the GLA licensing standards and explains what is expected to demonstrate compliance. The standards are the conditions of a licence.

Please note: references to “a licence holder” include applicants for a GLA licence.

## Licensing Standard 1: Fit and Proper Test

### 1.1 Critical: Fit and Proper

The licence holder, Principal Authority and any person named or otherwise specified in the licence must at all times act in a fit and proper manner.

#### Please note

- The GLA will assess all relevant factors in considering whether a licence holder acts in a fit and proper manner.
- The factors the GLA will consider include, but are not limited to, whether the Principal Authority, directors or company officers (where the licence holder is a company), partners (where the licence holder is a partnership), members of the association (where the licence holder is an unincorporated association) and any person named or otherwise specified in the licence has:
  - intentionally obstructed the GLA (including under-declaring turnover),
  - been convicted of any criminal convictions unspent under the Rehabilitation of Offenders Act 1974. Particular consideration will be given to offences of dishonesty, fraud, violence, human trafficking, carrying offensive weapons, fire arms offences, intimidation, blackmail or harassment,
  - contravened any of the requirements and standards of other regulatory authorities, including the Department for Business Enterprise and Regulatory Reform, Department for Work and Pensions, HM Revenue and Customs, Health and Safety Executive, UK Border Agency, Police, local authorities or other overseas authorities,
  - been an owner, director or partner, or has been concerned in the ownership or management of a business that has gone into insolvency, liquidation or administration whilst the person has been connected with that organisation,
  - been investigated, disciplined, censured or criticised by a regulatory or professional body, court or tribunal, whether publicly or privately in matters relating to any business with which they have been involved,
  - been dismissed from, or asked to resign and resigned from, employment or from a position of trust, fiduciary appointment or similar,
  - been disqualified from acting as a director or disqualified from acting in any managerial capacity,

- not been candid and truthful in all their dealings with any regulatory body and they demonstrate a readiness and willingness to comply with the requirements and standards of the regulatory system and with other legal, regulatory and professional requirements and standards, or
- been influenced by a third party who the GLA considers not fit and proper.
- The GLA treats each case individually, taking account of the seriousness of, and circumstances surrounding the matter in question. The GLA will consider the explanation offered by the person to whom it relates, the relevance of any conviction, rehabilitation and evidence that the matter will not reoccur.
- Failure against this standard may lead to a licence being revoked with immediate effect.
- The GLA will usually refuse applications in the following circumstances unless the applicant can show exceptional circumstances to justify being granted a licence:
  - once an applicant is found to be not fit and proper for at least two years from the date of that fit and proper decision, or
  - where an applicant has been refused or revoked twice within a two year period, except on fit and proper grounds, for at least two years from the date of the second decision.
- The GLA will also consider refusing an application in the following circumstances:
  - once an applicant is found to have been connected to someone who has been deemed to be not fit and proper for two years from the date of the fit and proper decision, or
  - where an applicant is found to have been connected to someone who has been refused or revoked twice within a two year period except on fit and proper grounds for two years from the date of the second decision.

## 1.2 Critical: Principal Authority Competency Test

The GLA will consider the Principal Authority's competence and capability to hold a GLA licence in deciding whether the Principal Authority is "fit and proper". In making this decision regard will be given to matters including, but not limited to whether the Principal Authority has an understanding of the GLA licensing standards and / or has sufficient management processes, including being able to provide:

- (draft) worker contract,
- an understanding of the requirements to ensure the health and safety of a worker,
- (draft) payroll arrangements including wage slips,
- (draft) tenancy agreement if the licence holder intends to provide, or effectively provide, accommodation,
- an understanding of the gas and electricity safety requirements if it is the intention of the licence holder to provide, or effectively provide, accommodation,
- copies of their PSV operator's licence and the vehicles' insurance, PSV registration, and MOT certificate where applicable if the licence holder intends to provide transport for a worker,
- (draft) example of how a worker file will be compiled, and
- an understanding of the procedure for checking a worker's entitlement to work in the UK.

The GLA will accept draft documents only where no workers are or have ever been supplied by the applicant or licence holder to GLA licensable sectors. Where a business is trading in sectors not covered by licensing, evidence of how they operate in those sectors, including the above matters, may be considered in determining whether the Principal Authority is competent. In all other circumstances the GLA will expect to see evidence of practice used by the labour provider on a day to day basis.

### **Please note**

Where this standard is failed for licence holders where a new Principal Authority has been appointed, the licence may be revoked with immediate effect.

### **1.3 Critical: Correcting Additional Licence Conditions**

A licence holder must correct any Additional Licence Conditions (ALCs) within the time period prescribed by the GLA.

#### **Please note**

- This includes notifying the GLA within 20 working days once the licence holder starts to supply workers in the licensable sectors following the issue of a licence.
- This should be done in accordance with the GLA's instructions on clearing ALCs.
- Failure against this standard will lead to a licence being revoked without immediate effect.

### **1.4 Changes in Details**

A licence holder must notify the GLA within 20 working days if:

- the Principal Authority changes,
- the trading name changes, or
- the Principal Authority, directors, company secretary or partners are convicted of any criminal offence or receive an alternative civil sanction.

#### **Please note**

- Non-compliance with this standard will contribute 16 points to a licensing standard compliance score. These 16 points will remain on the licence for a 12 month period and will count towards any subsequent inspection score within that period. This standard will be failed unless the licence holder can provide a reasonable explanation for why they have not notified the GLA within the timescale required.
- A licence holder should also notify the GLA if any directors, company secretary, partners or other individuals named on the licence change and if any contact details change (for example, the address, email or telephone number).
- A licence will expire if a licence holder's registered company number, Unique Tax Reference or VAT number change.

## Licensing Standard 2: Pay and Tax Matters

### 2.1 Critical: PAYE, NI and VAT

- A licence holder who employs workers under a contract of employment, contract of service, engages them under a contract for services or where the provisions of Chapter 7 of Part 2 of the Income Tax (Earnings and Pensions) 2003 apply must:
  - be registered with HM Revenue and Customs and have a valid PAYE number, and
  - accurately calculate and deduct tax and National Insurance from all workers' pay and pay the correct amount to HM Revenue and Customs in a timely manner.
- A licence holder who exceeds the VAT threshold must:
  - be registered with HM Revenue and Customs, and
  - charge and pay the correct amount of VAT in a timely manner.

#### Please note

Failure against this standard will lead to the licence being revoked without immediate effect.

### 2.2 Critical: Minimum Wage

- A worker must be paid at least the National Minimum Wage (NMW) or, if applicable, in accordance with the appropriate Agricultural Wages Order (AWO).
- Sufficient records must be kept to prove payment of NMW or in accordance with the appropriate AWO.

#### Please note

Failure against this standard will lead to the licence being revoked without immediate effect.

### 2.3 Wages and Benefits

A licence holder must maintain records to show that workers receive paid annual leave, sick, maternity, paternity and adoption pay to which they are legally entitled.

## **2.4 Payslips**

A licence holder must provide workers with itemised payslips for each pay period which accurately record gross and net wages and the amounts and purposes of deductions.

## Licensing standard 3: Prevention of Forced Labour and Mistreatment of Workers

### 3.1 Critical: Physical and Mental Mistreatment

A worker must not be subjected to physical or mental mistreatment and threats must not be made to the worker or others.

#### Please note

Failure against this standard may lead to a licence being revoked with immediate effect.

### 3.2 Critical: Restricting a Worker's Movement, Debt bondage and Retaining ID Documents

- A licence holder must not:
  - restrict a worker's movement. There should be no debts between a licence holder and worker that prevent the worker freely seeking other employment. Workers must be free to work elsewhere without incurring, or fear of incurring, any other detriment,
  - subject, or threaten to subject, a worker to any detriment because the worker has terminated or given notice to terminate any contract between the worker and the licence holder or the worker has taken up or proposes to take up employment elsewhere,
  - retain identity papers, except when it is necessary to check a worker's entitlement to work in the UK, and then only until the check is complete, or
  - force or coerce a worker to work against their will.
- If a worker is loaned money directly or indirectly by the licence holder to meet their travel or other expenses to take up a position, the worker:
  - cannot be required to repay a sum greater than the sum loaned, or
  - must be provided in writing with full details of the repayment terms of any loan.

#### Please note

Failure against this standard may lead to a licence being revoked with immediate effect.

### **3.3 Critical: Withholding Wages**

A licence holder must not withhold or threaten to withhold the whole or part of any payment due to a worker in respect of any work they have done on the basis that:

- the licence holder has not received payment from the labour user,
- the worker has failed to prove that they have worked during a particular period of time (but this does not prevent the licence holder from satisfying itself by other means that the worker worked for the particular period in question),
- the worker has not worked during any period other than that to which the payment relates, or
- any matter within the control of the licence holder.

#### **Please note**

Failure against this standard may lead to a licence being revoked with immediate effect.

## Licensing Standard 4: Accommodation

### 4.1 Critical: Quality of Accommodation

A licence holder who provides, or effectively provides, accommodation must ensure the property is safe for the occupants.

#### Please note

- The accommodation must be maintained in a good state of repair, must contain adequate kitchen, bathroom and toilet facilities for the number of occupants and must not be overcrowded. Any category 1 hazards as assessed under the Housing Health and Safety Rating System must be properly resolved.
- Furniture and furnishings supplied in the accommodation must comply with all relevant legislation.
- Gas installations must be maintained at least annually by a suitably qualified person registered with the Gas Safe Register: [www.gassaferegister.co.uk](http://www.gassaferegister.co.uk). Copies of the annual gas safety check must be given to all occupants or prominently displayed in the property. If such a person has said that remedial actions are needed to make the installation safe, this remedial work must be undertaken as soon as possible by a suitably qualified person.
- Electrical equipment, including the fixed wiring and any appliances, must be safe and properly maintained.
- A licence holder will be considered as providing or effectively providing accommodation in all the following circumstances whether or not the accommodation is let by the licence holder or a third party:
  - the accommodation is provided in connection with the worker's contract of employment,
  - a worker's continued employment is dependent upon occupying particular accommodation, or
  - a worker's occupation of accommodation is dependent upon remaining in a particular job.
- Where the provision of accommodation by a licence holder and a worker's employment are not dependent upon each other, a licence holder may be considered to be providing accommodation in circumstances where:

- a licence holder is a worker's landlord either because they own the property or because they are subletting the property,
- a licence holder and the landlord are part of the same group of companies trading in association,
- a licence holder's and the landlord's business have the same owner, or business partners, directors or shareholders in common, or
- a licence holder or an owner, business partner, shareholder or director of the licence holder's business receive a monetary payment and / or some other benefit from the third party acting as landlord to the workers.

A third party in this instance includes:

- a business and company which is a separate legal entity to the licence holder,
- an individual including those who are family members of a director, business partner, shareholder, owner or Principal Authority of the licence holder, and
- a business or company with a director, shareholder, owner or business partner who is a family member of a director, shareholder, owner, Principal Authority or business partner of the licence holder.

This interpretation will apply whenever the licence holder is providing accommodation regardless of whether the worker can choose whether or not to occupy the accommodation. Even if the accommodation is optional, where the worker chooses to accept the offer, this interpretation will apply.

- Failure against this standard may lead to a licence being revoked with immediate effect.

## **4.2 Licensing of Accommodation**

- A licence holder who provides, or effectively provides, accommodation must ensure the property is properly licensed or registered:
  - if it is a licensable House of Multiple Occupation,
  - is in an area subject to selective licensing, or
  - if the accommodation is on a caravan site which requires licensing.
- A licence holder who provides accommodation in Scotland must be registered with the local authority as a private landlord.

### 4.3 Situations Where Workers are Provided With Travel or Required to Live Away From Home

- A licence holder must not arrange work for a worker (except where the worker is employed by the labour user) if, in order to take up that work the worker must live away from their UK home, unless the licence holder has taken all reasonable steps to ensure that:
  - suitable accommodation will be available for the worker before they start work,
  - the worker has been informed of details of the accommodation including any cost to them, and
  - suitable arrangements have been made for them to travel to such accommodation.
  
- Where a worker is:
  - to be supplied to a labour user, except as the labour user's employee, or is under 18 years old, and
  - the licence holder, labour user or any intermediary has arranged free travel or paid the worker's travel expenses to work,the licence holder must, if the work does not start or when it finishes, either:
  - arrange free travel for the worker's return journey,
  - pay the worker's return fare, or
  - arrange for the labour user or any intermediary to provide free travel or pay the return fare.
  
- A licence holder must give notice to the worker setting out the details of the free or paid for travel, including any conditions which apply.
  
- A licence holder must not arrange work for a worker younger than 18 years old where they are required to live away from home unless the worker's parent or guardian has consented.

#### **Please note**

Where a labour user does not comply with the undertaking to arrange free return travel or pay the return fare, the licence holder must either arrange free travel for the return journey of the worker or alternatively pay their fare.

#### **4.4 Tenancy Notice Periods**

Where a worker lives in accommodation provided, or effectively provided, by the licence holder, they must be allowed to find suitable alternative accommodation after giving 10 working days notice.

## Licensing Standard 5: Working Conditions

### 5.1 Rest Breaks

A worker must be able to take legal minimum rest periods.

### 5.2 Working Hours

- A worker must not be forced to work more than 48 hours a week on average unless they agree to work beyond this limit.
- Any agreement must be voluntary, in writing and signed by the worker.
- A worker must be free to amend or cancel this agreement, subject to notice requirements.

### 5.3 Right to Belong to a Trade Union

A worker must not be prevented from taking up trade union membership nor be penalised for doing so.

### 5.4 Providing Workers in Industrial Disputes

A licence holder must not introduce or supply a worker:

- to replace a worker taking part in an official strike or any other industrial action, or
- to do work of someone who has been transferred by the labour user to perform the duties of the person on strike or taking industrial action.

#### **Please note:**

- This standard will not be failed if the licence holder does not know, or has no reasonable grounds for knowing, that official strike action is in progress.
- This standard does not apply to unofficial strike action.

## **5.5 Confidentiality**

A licence holder must not disclose any personal data about a worker without their prior consent unless it is required by any other licensing standards or any other law.

### **Please note**

If a worker gives consent and then withdraws it, the licence holder cannot consider itself to have the worker's prior consent. In addition, it may not make provision of its services conditional upon the worker giving their consent or agreeing not to withdraw it once it has been given.

## **5.6 Disciplinary and Grievance Procedures**

A licence holder must deal properly with disciplinary matters and grievances.

## **5.7 Discrimination**

A licence holder must not unlawfully discriminate against any worker or applicant.

## Licensing Standard 6: Health and Safety

### 6.1 Assigning Responsibility and Assessing Risk

A licence holder must co-operate with the labour user to ensure that:

- responsibility for managing the day to day health and safety of the workers has been agreed and assigned,
- suitable and sufficient health and safety risk assessment has been completed (and recorded where required) before work commences, and
- any risks identified are properly controlled.

### 6.2 Instruction and Training

- A licence holder must co-operate with the labour user to ensure responsibility for:
  - any health and safety training, including induction training, deemed necessary to carry out the work safely has been agreed and assigned,
  - making sure that the workers provided have received any necessary health and safety training, including induction training, appropriate to the site(s) at which they are working and the work they have been employed to do, and
  - making sure all information and training is comprehensible.
- No charge may be made for providing health and safety training. Any time spent training should be treated as an extension of time at work.

### 6.3 Safety at Work

A licence holder must co-operate with the labour user to make sure that:

- adequate and appropriate Personal Protective Equipment (PPE) is provided. Employees and workers who would be legally regarded as employees for health and safety purposes must be provided with PPE without charge,
- adequate arrangements have been made to provide welfare facilities (sanitary conveniences, washing facilities, drinking water, facilities for changing clothes and for rest and consuming food and drink) where it is reasonably practicable to do so or if it is legally required, and
- adequate arrangements have been made for first aid and the recording and reporting of reportable incidents at work.

### **Please note**

- A licence holder must not ask for payment for PPE from employees and workers who would be legally regarded as employees for health and safety purposes. This includes seeking refundable or non-refundable deposits.
- If a worker fails to return the PPE, as long as the requirement to do so has been made clear in writing, the licence holder may deduct the cost of the replacement from any wages owed.
- Accidents must be properly investigated so that lessons can be learned and changes can be made to ways of working, equipment or supervision if necessary.

## **6.4 Critical: Transport**

- A vehicle used by the licence holder to transport workers must:
  - have a valid vehicle licence (tax disc), applicable MOT certificate (if required) and insurance,
  - be in a roadworthy condition and have no obvious or identifiable defects, and
  - carry workers in a safe manner.
- A licence holder who operates vehicles with 9 or more passenger seats used for hire and reward must:
  - have a Public Service Vehicles (PSV) Operator's licence,
  - have documentary evidence that the vehicles are registered and maintained as PSVs and have a Certificate of Initial Fitness.
- A driver used to transport workers must:
  - hold a valid driving licence,
  - have Passenger Carrying Vehicle (PCV) entitlement and driver Certificate of Professional Competence if driving a vehicle with nine or more passenger seats used for hire and reward, and
  - Comply with rules covering drivers' hours and tachographs.

### **Please note**

- In assessing whether a vehicle has "obvious or identifiable" defects, the GLA will apply a common sense test of whether the vehicle is clearly unsafe, for example, without seatbelts or with unsafe seats and doors.

- The GLA will take a proportionate view in deciding on whether to fail this standard for minor infringements or easily fixable issues.
- Failure against this standard may lead to a licence being revoked with immediate effect.

## **6.5 Critical: Using Workers to Gather Shellfish - Planning and Supervision**

A licence holder must ensure each group of workers has a recognised and competent supervisor / group leader who must:

- have knowledge of local tide tables and an accurate watch,
- have knowledge of forecast weather conditions,
- have knowledge of local conditions, for example quicksand, shifting gullies, rivers in flood, the nature and speed of the tide,
- be able to communicate directly with workers under their control,
- have a suitable communications device – either a VHF marine band radio or a mobile telephone where reception is adequate. Batteries should be sufficiently charged and the devices should be kept dry,
- have a location device, preferably a Global Positioning Unit (GPS) and / or compass,
- have emergency telephone numbers for the Maritime and Coastguard Agency and other Emergency Services,
- have emergency equipment – whistles in case of fog / mist and flares,
- recognise that working at night creates additional risks and requires appropriate and special precautions,
- accompany the workforce as appropriate when working below the high tide mark,
- be able to demonstrate they can adequately supervise all workers. The size of the group will depend on the experience of the licence holder / supervisor as well as the prevailing weather and local conditions,
- allow sufficient time to get workers ashore safely,
- have high visibility clothing which is both warm and weatherproof available for the workers,

- notify the Maritime and Coastguard Agency Rescue and Coordination Centre of times going out and coming back, where the work is planned to take place, the size of the group, the licence holder's URN and contact details, and
- any supervisor / group leader is named on the licence.

#### **Please note**

Failure against this standard may lead to a licence being revoked with immediate effect.

### **6.6 Critical: Using Workers to Gather Shellfish - Getting to the Work Area**

A licence holder must ensure:

- any vehicle used to access the fishery is suitable for the work area and has sufficient fuel for emergencies. If access is via public roads, all vehicles must be roadworthy and properly insured,
- where a trailer pulled by any vehicle is used to carry passengers, they must be suitable, including being fitted with a headboard, tailboard and suitable side protection to prevent passengers falling off and provided with adequate means of communication between the driver and trailer. Passengers should not be carried in tractor cabs (unless the manufacturer has provided a second seat), on tractor steps or on the drawbar.

#### **Please note**

Failure against this standard may lead to a licence being revoked with immediate effect.

### **6.7 Critical: Using Workers to Gather Shellfish - Lifejackets and Life Rafts**

- A licence holder must provide lifejackets and life rafts where required.
- A worker using a lifejacket and / or life raft must be properly trained and be able to operate them in an emergency.
- Lifejackets and life rafts must be routinely checked and maintained in accordance with the supplier's instructions.

#### **Please note**

Failure against this standard may lead to a licence being revoked without immediate effect.

## **6.8 Critical: Using Workers to Gather Shellfish - Use of Boats**

Any boat used by a licence holder for accessing fisheries and transporting workers must be a Maritime and Coastguard Agency certificated workboat.

### **Please note**

Failure against this standard may lead to a licence being revoked with immediate effect.

## **6.9 Critical: Shellfish Gathering Permits and Licences**

Where a permit or licence for shellfish gathering is required, a licence holder must ensure that the workers possess and comply with that permit or licence.

### **Please note**

Failure against this standard may lead to a licence being revoked with immediate effect.

## Licensing Standard 7: Recruiting Workers and Contractual Arrangements

### 7.1 Critical: Fees and Providing Additional Services

- A licence holder must not charge a fee to a worker for any work-finding services.
- A licence holder must not make providing work-finding services conditional on the worker using other services or hiring or purchasing goods provided by the licence holder or any person connected to them.
- A worker must be able to cancel or withdraw from any services provided at any time without incurring any detriment or penalty, subject to the worker giving 5 working days notice or, for services relating to providing accommodation, 10 working days.

#### Please note

- “Work-finding services” means services (whether by providing information or otherwise) provided by a licence holder:
  - to a person for the purpose of finding that person employment or seeking to find that person employment,
  - to an employee of the licence holder for the purpose of finding or seeking to find another person, with a view to the employee acting for and under the control of that other person, or
  - to a person (“A”) for the purpose of finding or seeking to find another person (“B”), with a view to A becoming employed by the licence holder and acting for and under the control of B.
- Failure against this standard will lead to a licence being revoked without immediate effect.

### 7.2 Right to Work

A worker must have entitlement to undertake the work in question in the UK.

#### Please note

- A worker’s visa restrictions must be complied with.
- In the event that it is discovered that a worker is not legally entitled to work in the UK, this standard will not be failed if the licence holder has established and retained a statutory defence.

## 7.3 Workers: Contractual Arrangements and Records

### Terms and Conditions

- Before supplying a worker employed on a contract of service or engaged on a contract for services, a licence holder must agree and provide the terms in writing which will apply between the licence holder and the worker, including:
  - the type of work the licence holder will find or seek to find for the worker,
  - whether the worker is or will be supplied by the licence holder under a contract of service (i.e. a contract of employment) or a contract for services, and in either case, the terms and conditions which will apply,
  - an undertaking to pay the worker for any work carried out regardless of whether the licence holder has been paid by the labour user,
  - the length of notice the worker is required to give and entitled to receive to terminate any contract,
  - the pay rate or the minimum rate to be expected (for example NMW or appropriate AWO),
  - details of the intervals at which remuneration will be paid, and
  - details of any entitlement to annual holidays and to payment in respect of such holidays (including appropriate AWO entitlement);
- Terms may be varied only by written agreement from the worker. A copy of this agreement must be provided to the worker as soon as possible and no later than the end of the 5th working day following the date the variation was agreed.
- Employees who have been employed continuously for one month or more under a contract of employment are entitled to receive a written statement of employment particulars within two months of the date that the employment began.
- A worker must be informed in writing of any fees relating to services which they have taken up. This should include:
  - the amount or method of calculation of the fee,
  - the identity of the person to whom the fee is or will be payable,
  - a description of the services or goods to which the fee relates as well as explaining the worker's right to cancel or withdraw from the service and the length or notice period required, and

- the circumstances, if any, in which refunds or rebates are payable to the worker, the scale of such refunds or rebates, and if no refunds or rebates are payable, a statement to that effect.
- A licence holder may not make the continued provision of any services by them to a worker conditional on the worker agreeing to any variation.

### **Worker Records**

A licence holder must record as soon as reasonably practicable:

- the date terms are agreed between the licence holder and the worker,
- the worker's name, address and, if under 22, date of birth,
- any terms which apply or will apply between the licence holder and the worker, and any document recording any variation,
- any relevant details of the worker's training, experience or qualifications and any authorisation to undertake particular work (and copies of any relevant documentary evidence obtained by the licence holder),
- the names of labour users or sub-contractors / other labour providers to whom the worker is supplied,
- details of any resulting engagement and the date from which it takes effect,
- the date any contract was terminated, where applicable, and
- where payments are made by a worker, other than those legally required, there is evidence of the worker's written consent.

### **Please note**

- A licence holder must record all terms in writing, where practicable in one document, and give the worker the written terms before they provide services to the worker.
- Records must be kept for at least one year.
- A licence holder may keep records either at the premises where they trade, or elsewhere, provided they are readily accessible and capable of being delivered to the licence holder's premises in the UK or to the Authority within 2 working days.
- Records may be kept either in written or electronic form.

## 7.4 Labour User: Agreements and Records

### Agreements

Before first providing services, other than providing information, to a labour user, a licence holder must agree in writing the terms which will apply between the licence holder and labour user, including:

- Details of any fee which may be payable by the labour user to the licence holder including:
  - the amount and method of calculating the fee, and
  - the circumstances in which a refund or rebate will be payable to the labour user and, if none is payable, a statement to that effect in the terms, and
  - the procedure to be followed if a worker introduced or supplied to the labour user proves unsatisfactory.
- If any variation to those terms is agreed, the licence holder must provide the labour user with a document containing details and the date of the variation as soon as reasonably practicable.

### Records

A licence holder must record, as soon as reasonably practicable, the following details relating to each labour user:

- the date terms are agreed between the licence holder and labour user,
- the labour user's name and address, and location of the place of work if different,
- details of the position(s) the labour user seeks to fill,
- the duration or likely duration of the work,
- any training, experience or qualifications and any authorisation to undertake particular work,
- the terms offered in respect of the position 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,
- the details of each resulting engagement and date from which it takes effect, and

- dates of requests by the licence holder for fees or other payment from the labour user and of receipt of such fees or other payments, and copies of statements or invoices.

#### **Please note**

- Records must be kept for at least one year.
- A licence holder may either keep records at the premises where they trade, or elsewhere, provided the records are readily accessible and capable of being delivered to the licence holder's premises in the UK or to the GLA within 2 working days.
- Records may be kept in either written or electronic form.
- A licence holder must send a copy of the terms to the labour user as soon as reasonably practicable. The licence holder and the labour user must agree to any variation in the terms set out in this document and the licence holder must provide a document containing details and the date of the variation as soon as is reasonably practicable.

### **7.5 Restriction on Charges to Labour Users**

A worker must not be disadvantaged from taking up permanent employment by the imposition of a transfer fee other than one legally allowed.

## Licensing Standard 8: Sub-Contracting and Using Other Labour Providers

### 8.1 Critical: Sub-Contracting and Using Other Labour Providers

A licence holder must only use a sub-contractor and / or other labour provider who holds a current GLA licence.

#### Please note

- It is a criminal offence to use an unlicensed gangmaster under section 13 of the Gangmasters (Licensing) Act 2004.
- Failure against this standard may lead to a licence being revoked with immediate effect.
- The standard will not be failed if the licence holder has complied with the Reasonable Steps guidance or the GLA's Active Check process for verifying that the sub-contractor or other labour provider is licensed, and has retained documentary evidence of such compliance to establish a statutory defence.

### 8.2 Records of Dealing With Other Licence Holders

A licence holder must record as soon as reasonably practicable the names of any other sub-contractors whose services the licence holder uses.

#### Please note

- Records must be kept for at least one year.
- Records may be kept at any premises a licence holder uses for or in connection with the carrying on of their business, or elsewhere; if kept elsewhere, the licence holder must ensure the records are readily accessible and capable of being delivered to the licence holder's premises in the UK or to the GLA within 2 working days.
- Records may be kept either in written or electronic form.

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