



Gangmasters
Licensing Authority

Licensing Standards

Agriculture, Horticulture, Shellfish Gathering and Processing
and Packaging for Food, Fish and Shellfish

October 2006



Introduction

1. The Gangmasters Licensing Authority (GLA) was set up to protect workers from exploitation in the agriculture, horticulture, shellfish gathering and food processing and packaging sectors. The GLA operates a licensing scheme for persons acting as gangmasters working in these sectors.
2. Section 4 of the Gangmasters (Licensing) Act 2004 defines the term gangmaster. Essentially, 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, e.g. harvesting or gathering agricultural produce
 - uses labour to gather shellfish
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; or
 - determine where, when or how the worker carries out the work; or
 - require the worker to sell his or her gathered shellfish to them as the first link in the buying chain.
4. The above applies whether the gangmaster makes these arrangements directly with a worker or makes them indirectly through another person (e.g. a supervisor, intermediary or agent). Any person making such arrangements should be named on the licence of the gangmaster.
5. Labour includes temporary or permanent workers.
6. The GLA licensing standards set out the conditions that must be complied with in order to qualify for and retain a licence. This document:
 - explains the GLA licensing regime; and
 - identifies the specific areas that need to be complied with.
7. The GLA appreciates that many people operating in the regulated sectors are concerned with the term “gangmaster”. The GLA acknowledges these concerns. However, for the purposes of the licensing standards, it is necessary to use a term that reflects all activities that come within the definition of acting as a gangmaster. Extending the licensing scheme to the shellfish gathering sector, where acting as a gangmaster includes using labour, has made it necessary to replace the term “labour provider”. Therefore, any person falling within the definition of acting as a gangmaster under the 2004 Act will be referred to as a “gangmaster” in this document.

8. The standards comprise the obligations contained in the Gangmasters (Licensing Conditions) Rules 2006 plus other relevant legal requirements. In the main, the licensing standards cover issues such as VAT registration and health and safety – things that many businesses will already be well aware of and complying with. Other parts of the standards, dealing with the issues such as debt bondage, may be less familiar. In overall terms the GLA standards are a reasonable range of measures that should be in place in any well-run business complying with existing law.
9. This version of the licensing standards supersedes the version issued in March 2006 “Licensing Standards: Agriculture, Horticulture and Processing and Packaging for Food, Fish and Shellfish”. This follows the extension of licensing to the shellfish gathering sector. The licensing standards now include additional provisions for those operating in this industry. The GLA will revise the licensing standards from time to time in the light of any changes in law that might affect them and in the light of operational experience.
10. Part One of this document gives useful background and guidance. Part 2 sets out the detail of the licensing standards.

Part One

How the Licensing Standards will be Applied

11. The licensing standards will be applicable on the basis of the type of business. This means that not all the licensing standards will apply to all applicants. Generally, if a worker is paid by the gangmaster then they will be expected to meet most of the standards. However, if you are not able to meet a standard because it is not appropriate for your business, you can still be granted a licence.
12. For ease of reference, the standards are generally applied in the following way:
 - all applicants and licence holders must comply with licensing standards 1, 3, and 9 (NB LS1.1 – 1.3 only apply once a licence has been granted)
 - those involved in shellfish gathering must comply with licensing standard 1.4
 - those who employ workers under contracts of employment or engage them under contracts for services are required by law to pay those workers subject to the PAYE and National Insurance rules and must comply with licensing standards 2, 5, 7 and 10
 - licensing standard 4, which concerns accommodation, only applies if the applicant or licence holder provides or effectively provides accommodation for their workers, e.g. if they provide accommodation through a company owned or operated by them, or take payments for accommodation (irrespective of who owns that accommodation) by making deductions from pay
 - those operating in the agriculture and food processing and packaging sectors must comply with licensing standard 6, from 6.1 to 6.11
 - gangmasters involved in the supply and use of workers for shellfish gathering must comply with section 6 (6.4, 6.7- 6.22)
 - those who introduce workers for direct employment with a labour user must comply with licensing standards 7, 9 and 10
 - gangmasters involved in sub-contracting must comply with licensing standard 8
13. If necessary, further advice and guidance on how the licensing standards might apply to an individual business can be obtained from the GLA.

Assessing Compliance with the Licensing Standards

14. 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. 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.

15. Compliance with the licensing standards is then assessed through inspections, which will be conducted either by a GLA compliance officer or an approved external auditor. There are two types of inspection visit:
- **application inspection** for new applicants. The GLA intends in the future to use a risk assessment to determine which applicants will be required to undergo an application inspection. All applicants will be inspected until sufficient risk analysis data has been collected to ensure the effectiveness of such a risk assessment
 - **compliance inspection** for licence holders. Along with a random element, the GLA will risk assess which licence holders will undergo a compliance inspection. If the licence holder fails to co-operate with GLA officers, it may be considered as obstruction, which is a criminal offence (section 18 of the Gangmasters (Licensing) Act 2004)
16. For the purposes of inspections, there are four categories of licensing standard each with an associated score. The inspection will test the relevant licensing standards, which will result in an overall score. The scoring system determines whether an applicant and licence holder has passed or failed an inspection. The fail score for inspection is 30 points. The categories and associated scores are:
- | | |
|--------------------------|---|
| Critical (C): | most serious category of non-compliance (30 Points) |
| Major (M): | major non-compliances, but less than critical (8 Points) |
| Reportable (R): | significant non-compliances, which may be reported to other government departments or agencies (4 Points) |
| Correctable (Co): | less severe non-compliances than above (2 Points) |
17. The GLA may not initially include scores for lower levels of non-compliance (e.g. reportable and correctable) in deciding whether an inspection has failed. The scores for those non-compliances will be counted towards a risk rating score for licence holders. This rating will assist the GLA in identifying when, and which, licence holders may require a compliance inspection. Some inspections will be conducted on a random basis.
18. The GLA will monitor the effectiveness of licensing standards and levels of compliance. In light of this, the GLA may decide in future to include or exclude lower levels of categories of non-compliance in deciding whether an applicant or licence holder has failed an inspection. For non-compliances against standards drawn from other legislation, the GLA may notify the appropriate government department or agency.
19. This particularly applies to evidence of:
- any lack of proper business systems in place to demonstrate the payment of National Insurance, tax and VAT
 - individuals who do not have the right to work in the UK
 - fraud or criminal activity of any kind

- mistreatment or exploitation of workers in any way
 - any dangerous practices
 - breaches of health and safety issues
20. Information will be passed to the department's business support section (e.g. the section that assists and advises businesses on how to improve their compliance and understanding of regulations)
21. 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.

Methods of Obtaining Compliance Information

22. During an inspection, the applicant or licence holder will 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 will 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.
23. The applicant or licence holder will be asked to provide documentary evidence (such as written terms and conditions with workers and clients e.g. 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.

New Licence Applications

24. A licence will be refused to any first time applicant who fails to satisfactorily meet the licensing standards that are appropriate for their business. A report will be issued outlining the reasons for the refusal and what steps ought to be taken for a successful application.
25. 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. Additional licence conditions may be imposed. These additional conditions will specify improvements within set timescales. Failure to comply with any additional licence conditions may lead to the licence being revoked.

Existing Licence Holders

26. For existing licence holders, 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 will be revoked immediately or from a given date. For licence holders with less severe non-compliances, additional licence conditions will be attached to the licence. The additional licence conditions that are added to the licence will specify improvements within set timescales and will increase the likelihood of a further compliance inspection. Failure to comply with any additional licence conditions may lead to the licence being revoked.

New Businesses

27. 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 that demonstrate the ability to conform to each section.
28. 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.

Employment Agencies and Employment Businesses

29. Employment agencies and employment businesses that come within the scope of the Act, whether supplying temporary or permanent labour, will be tested against the licensing standards.
30. However, given that many may supply labour also to other sectors not covered by the Act, and may have been inspected under DTI rules, the extent to which the inspection needs to be targeted by the GLA will be decided on a case-by-case basis.

Effects of Refusal or Revocation of a Licence

31. If a licence application is refused, the applicant cannot trade in the regulated sectors.
32. If a 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 they should cease trading immediately.

Right of Appeal

33. There is right of appeal where a licence is refused or revoked. There is also a right of appeal against additional licence conditions attached to a licence.

Further Information and Guidance

34. The following guidance material is available on the GLA website (www.gla.gov.uk) or by telephoning the GLA Helpline on 0845 602 5020:
 - **Applying for a Licence Form Guidance** The guidance manual "Application form guidance" and accompanying brochure "How to apply and pay for a licence" explain how to complete a licence application.
 - **Exemptions from Licensing** The brochure "Do you need a licence?" explains the activities that are excluded from the licensing scheme.
 - **GLA Approach to Compliance** The "Compliance Code of Practice" provides guidance on the GLA's powers for compliance.
 - **Further Information on the GLA** The brochure "An introduction to the GLA" provides background information on the role and remit of the GLA. Newsletters and latest news bulletins are also available.

Part Two

The GLA Licensing Standards

This section sets out the detail of the GLA licensing standards. The symbols indicate the categories of non-compliance and what is expected to demonstrate compliance.

Categories of Non-Compliance

Critical (C):	Most serious category of non-compliance
Major (M):	Major non-compliances, but less than critical
Reportable (R):	Significant non-compliances that may be reported to other government departments or agencies
Correctable (Co):	Less severe non-compliances than the above

Licensing Standard 1: Possession of Valid Licences

Guidance

Persons acting as gangmasters in the regulated sectors must be licensed by the Gangmasters Licensing Authority.

Licence holders must also notify the GLA of any significant changes in details. Changes of personal details, address, names on the licence, directors etc must be reported to the GLA within 20 working days.

Persons acting as a “gangmaster” must act in a fit and proper manner. The GLA considers a “fit and proper” person to be any individual or organisation operating in the licensable sectors that complies with the licensing standards. In addition, individuals or organisations must not have been the subject of relevant convictions for offences connected to the 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 is brought to its attention along with any independent investigation by the GLA which 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 act as a gangmaster under the 2004 Act 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.
- 1.3 **Co** The licence holder and any person named or otherwise specified on the licence must provide:
 - his unique reference number (URN) to the labour user when he enters into arrangements to supply workers or services;
 - on demand, his URN to any workers supplied by him to a labour user;
 - on demand, his licence number to any worker used by him; and
 - on demand, details of any additional licence conditions to the labour user or any worker supplied or used by him.

- 1.4 **C** Where a permit or licence for shellfish gathering is required, the gangmaster must ensure that the workers comply with that permit or licence.

Licensing Standard 2: Payment of Wages, Tax, National Insurance, VAT: Improper Deductions and Allied Matters

Guidance

There must be proper schemes to collect National Insurance, income tax and VAT and proper records to show that the gangmaster has accounted to the relevant statutory authorities for all National Insurance and income tax deductions, all Employers' National Insurance 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 their express, written permission. The gangmaster must provide proper, complete and accurate wage slips.

At least the minimum wage must be paid for the job along with any benefits to which the employee is entitled.

An inspection will seek to assure that:

Proper Systems are in Place for the Collection of Tax/National Insurance/VAT

- 2.1 **M** There is evidence that the gangmaster is registered as an employer with HM Revenue and Customs (HMRC) and has a PAYE number.
- 2.2 **M** Deductions from workers' pay of income tax and National Insurance are accurate, appropriate and paid to HMRC.
- 2.3 **R** If the business exceeds the VAT threshold, there is documentary evidence that it is registered with HMRC and charges and pays VAT.

Improper Deductions/Withholding of Wages

- 2.4 **Co** There is evidence that the gangmaster has an accurate payroll system in place whether in a paper or electronic form.
- 2.5 **M** Where deductions from wages, other than those legally required, are made (e.g. for transport), there is evidence on file of workers' written consent to those deductions.
- 2.6 **M** **[Scotland - agricultural workers only¹:** No deductions from wages are made, other than those legally allowed, and any other payments being made by workers outwith the wages system to the gangmaster are supported by evidence on file of workers' written consent.]

¹ Scottish provisions apply only to workers engaged in **agriculture** (the definition of which also includes horticulture, some fish farming and, through case law, packaging produce grown within the same business enterprise). What it does not include is most fish processing, shellfish gathering and secondary packaging/processing where National Minimum Wage Rules apply.

- 2.7 **M** The gangmaster 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 themselves 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 gangmaster.

Minimum Wage in Payment

- 2.8 **C** The worker is paid at least the national or agricultural minimum wage, taking into account the rules on accommodation charges.

Benefits Paid (e.g. Sick Pay, Paid Annual Leave Entitlement)

- 2.9 **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.

Wage Slips Provided

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

Licensing Standard 3: Debt Bondage, Harsh Treatment or Intimidation of Workers

Guidance

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 gangmaster 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 workers' wages, they must give their written permission for this to be done.

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 the gangmaster does not deal with such cases properly.

An inspection will seek to assure that:

Unfair Treatment

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

Existence of any Bonded Debt: for Travel, Unearned Wages, Job Transfer

3.2 **C** There are no debts to the gangmaster that prevent a person freely seeking other employment.

3.3 **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.

3.4 **M** No worker is disadvantaged from taking up permanent employment by the imposition of a transfer fee other than that allowed in the Gangmasters (Licensing Conditions) Rules 2006.

3.5 **R** A worker is not penalised for giving notice, nor does the worker have to pass on details of any new employment.

Employment Freely Chosen

3.6 **C** 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.

Passports/Identity not Retained

3.7 **C** Workers are not required to surrender identity papers such as passports, beyond initial illegal working checks, for retention (see section 10.1 below).

Harassment, Abuse, Complaints Procedures

3.8 **Co** The gangmaster properly deals with disciplinary matters or complaints.

Confidentiality

Guidance

The Data Protection Act as well as the gangmaster'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, copy 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:

3.9 **R** The gangmaster 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 they are 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

3.10 **Co** Data and records are kept securely.

Licensing Standard 4: Workers' Accommodation

Guidance

Any accommodation provided, or effectively provided, by the gangmaster 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. Any charges for accommodation must be compliant with the national and agricultural minimum wage regulations.

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 their 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 and for them to travel home

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

An inspection will seek to assure that:

- 4.1 **M** No under-18 year-olds are compelled to stay away from home for work purposes.
- 4.2 **M** Where workers live in accommodation provided by the gangmaster, they are allowed to find suitable alternative accommodation after giving an agreed notice period.

- 4.3 **C** Where workers live in accommodation provided by the gangmaster, it contains appropriate facilities (e.g. water, power, heating, bedding, sanitation) and is safe for its inhabitants. The GLA will expect to see evidence that any electrical equipment provided for cooking, heating, recreational or similar use is being properly maintained and that tenants have been supplied with copies of the most recent gas safety certificate as required by the current Gas Safety (Installation and Use) Regulations.

[Scotland only Where appropriate, accommodation is licensed or registered in accordance with the Antisocial Behaviour etc (Scotland) Act 2004 (Part 8, registration of landlords) or the Civic Government (Scotland) Act 1982 (Licensing of Houses in Multiple Occupation) Order 2000.]

[England, Wales only There should be no evidence that the room and space standards set out in the Housing Act 1985 and 2004 and associated secondary legislation are breached nor that there is evidence of misuse of Houses of Multiple Occupancy (HMO).]

Licensing Standard 5: Hours Worked, Working Time Regulations, etc

Guidance

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 gangmaster must allow workers to take the breaks to which they are entitled during the working day. (See also Section 6 of these standards concerning drivers)

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

Licensing Standard 6: Breaches in Health and Safety, Including Training

Guidance

Health and safety legislation is complex but is an essential element of the arrangements under which labour is provided and works. The allocation of responsibility under the legislation depends on the relationship between the gangmaster and labour user. In many cases the employer, for the purposes of applying health and safety legislation, is likely to be the labour user; but this will not necessarily always be the case.

The GLA will expect clarity about and written clarification as to whether the gangmaster or labour user will be responsible for managing the health and safety of the workers provided. The conditions at work to which workers are exposed should comply with the legislation. This extends to transport arrangements and the place(s) of work.

It is particularly important that adequate health and safety training is given to workers and that the gangmaster and labour user have agreed, in writing, who will be responsible for providing that training. No charge may be made for such training, which should take place during working hours.

Any vehicles used by the gangmaster 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 **M** The gangmaster has co-operated with the labour user to ensure that:
- responsibility for managing the health and safety of workers has been agreed and assigned and that
 - the health and safety risks to which they may be exposed at work are properly controlled
- 6.2 **M** The gangmaster has co-operated with the labour user to ensure that responsibility for:
- the provision of information to workers about any special qualifications or skills they require to do the work for which they have been employed has been agreed and assigned
 - Any health and safety training, including induction training deemed necessary to carry out the work safely has been agreed and assigned and that
 - the workers provided have received any necessary health and safety (including induction) training appropriate to the site(s) at which they are working and the work they have been employed to do. The information and training should be comprehensible
- 6.3 **Co** Where a labour user employs more than five persons, or a gangmaster provides 5 or more workers to a labour user, the significant findings of any risk assessments should be recorded in a form which is retrievable and available to safety or other worker representatives or to inspectors from the GLA or the Health and Safety Executive.
- 6.4 **R** No charge is made for health and safety training required to carry out work and any time spent on training (including any training arranged outside of an employee's normal working hours) is treated as an extension of time at work.

Safe Place of Work

- 6.5 **M** The gangmaster has co-operated with the labour user to ensure that working conditions at the site(s) to which workers are provided comply with relevant health and safety legislation.
- 6.6 **M** The gangmaster has co-operated with the labour user to ensure that:
- adequate and appropriate personal protective equipment has been provided to the workers they supply and that
 - adequate arrangements have been made with regard to the provision of sanitary conveniences, washing facilities, drinking water, facilities for changing clothes and for rest and the consumption of food and drink, for first aid and the recording and reporting of reportable accidents and cases of ill health at work

Transport Arrangements

- 6.7 **M** Evidence that drivers or workers operating vehicles, mobile machinery or plant are not under age. They should also hold a current, relevant licence or certificate which is required by legislation and should not drive in excess of their permitted hours.

6.8 **C** The gangmaster's vehicles are being maintained and that there are no obvious/identifiable serious safety defects.

- 6.9 **R** There is documentary evidence that all vehicles used by a gangmaster for transporting workers are appropriately registered with the DVLA or the country of origin, have a valid vehicle licence (tax disc), MOT certificate (if required) and insurance.

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

- 6.11 **M** There is documentary evidence that vehicles with nine or more passenger seats used for hire or reward are registered as Public Service Vehicles (PSV) and that drivers have Passenger Carrying Vehicle (PCV) entitlement.

Shellfish Gathering – Safe Working in Estuaries and Tidal Areas

Guidance

Gangmasters must be familiar with the HSE current guidelines posted on the HSE website: www.hse.gov.uk/pubns/estuary.htm

Supervision

- 6.12 **C** Gangmasters must ensure that each group of workers has a recognised and competent supervisor/group leader. Any appointed person must be named on the gangmasters licence and should:
- be familiar with the use of equipment and procedures required by the standards specified below
 - be able to communicate directly with workers under his/her control
 - accompany the workforce at all times when working below the high tide mark

Information

- 6.13 **C** As a minimum, the gangmaster and any supervisor / group leader must ensure workers under their control have:
- local tide tables and an accurate watch
 - knowledge of current and forecast weather conditions, e.g. fog/flooding
 - knowledge of local conditions, e.g. quicksands, shifting gullies, rivers in flood, the nature and speed of the tide

Equipment

- 6.14 **C** The gangmaster and any supervisor/group leader must ensure workers under their control have:
- a suitable communications device - either a VHF marine band radio or a mobile telephone according to reception. Batteries should be fully charged and the devices should be kept dry
 - a location device, preferably a Global Positioning Unit (GPS) and/or compass
 - high-visibility clothing which is both warm and weatherproof
 - emergency equipment - whistles in case of fog/mist, and flares

Planning

- 6.15 **C** When planning work, the gangmaster and any supervisor/group leader must:
- have emergency telephone numbers for the Maritime and Coastguard Agency and other emergency services
 - recognise that it is vital to leave enough time to get workers and vehicles ashore safely. Extra time must be allowed for possible problems
 - be able to identify and cope with emergencies such as fog and quicksands
 - recognise that working at night creates additional risks and requires appropriate and special precautions
 - avoid lone working where possible
 - notify the Maritime and Coastguard Agency Rescue and Coordination Centre of times going out/coming back, where the work is planned to take place, the size of the group, the licence holder's URN and contact details
 - make sure that groups of workers are not too large. Group leaders must be able to adequately supervise all workers

Getting to the Work Area

6.16 **C** Vehicles used to access the fishery must be suitable for the work area, e.g. tractors, ATVs or similar.

6.17 **C** Tractors must be fitted with approved cabs or rollover protection.

6.18 **C** Where ATVs are used, the drivers should be competent and specifically trained in their use. A suitable and sufficient risk assessment should have been carried out to determine where and in what circumstances drivers should be provided with and should wear appropriate safety helmets.

6.19 **C** All vehicles should be roadworthy and properly maintained and should carry enough fuel for emergencies.

6.20 **C** Where trailers pulled by tractors are used to carry passengers, they must be fitted with headboards, tailboards and suitable side protection to prevent passengers falling off. Passengers should not be carried in tractor cabs (unless the manufacturer has provided a second seat), on tractor steps or on the drawbar. Normally ATVs should not be used to carry more passengers than specified in the manufacturer's handbook.

Lifejackets and Liferrafts

6.21 **C** Where applicable, users of lifejackets and liferafts must be properly trained and instructed in their use. They must be able to operate them in an emergency. The devices must also be routinely checked (daily, weekly and monthly) and maintained in accordance with the supplier's instructions.

Use of Boats

6.22 **C** Any boat used for accessing fisheries and transporting persons must be an MCA certificated workboat.

Licensing Standard 7: Recruitment and Contractual Arrangements

Guidance

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 including procedures to be followed if they are found to be unsatisfactory or unsuitable for the work for which they were hired.

The agreement between the labour user and the gangmaster should be in writing (see Appendix 1, paragraph 2)

An inspection will seek to assure that:

Recruitment

- 7.1 **R** Applicants for employment are not discriminated against when employment is offered.
- 7.2 **Co** The gangmaster 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 gangmaster or labour user considers is necessary, or which is 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 finder's fee for finding them work
 - they are not obliged to use the services of the licence holder to hire or purchase goods or services as a condition of finding work

Terms and Conditions

Guidance

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

A gangmaster may not enter into a contract with a labour user on a worker's behalf or on behalf of the labour user with the worker, without that worker's express permission.

- 7.3 **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 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 gangmaster 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

- 7.4 **M** There are no changes made either to contracts of employment or contracts for service without written consent by the employee.
- 7.5 **Co** No gangmaster may introduce a worker for direct employment by a labour user and continue to pay them (or make arrangements for such payment).

Licensing Standard 8: Sub-contracting

Guidance

A gangmaster 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.

The gangmaster cannot sub-contract any responsibilities with a labour user to another gangmaster without the prior consent of that labour user, which must be in writing.

A sub-contracting gangmaster must provide the labour user (including the licence holder to whom they are sub-contracting) with their URN as well as any other licence details (including additional licence conditions, if any), if so requested.

They must keep proper records as detailed in Appendix 1 (Record Keeping).

An inspection will seek to assure that:

- 8.1 **C** Any subcontractors used must be properly and currently licensed by the GLA.
- 8.2 **M** The names and any other names of sub-contractor(s) used are recorded as well as details of workers provided and the number of hours worked by them as laid down in Appendix 1, paragraph 2.
- 8.3 **Co** There is documentary evidence of the agreement between the gangmaster and all sub-contractors.
- 8.4 **Co** The gangmaster has the worker's permission before transferring them to another licence holder.

Licensing Standard 9: Identity Issues, Under-Age Working

Guidance

The identity of all workers must be known to the gangmaster and verified. Proper records must be maintained which identify each worker and the hours they work. The GLA licensing conditions require that the gangmaster must ensure that the labour user can identify those workers supplied. See Appendix 1, paragraph 1 concerning the records that must be kept.

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:

Identity Issues

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

Proof of Age (Underage Working)

- 9.2 **M** Details of any work activities, including times and dates worked, carried out by children and young workers are held on file.
- 9.3 **R** There are copies of adequate and suitable risk assessments available where young persons are employed.
- 9.4 **M** Children and/or young persons are only carrying out work permitted by law.

Licensing Standard 10: Legality and Rights of Workers

Guidance

Only those who are legally able to work may be employed. It is essential that the gangmaster ensures that proper records are kept and checks made in line with Home Office guidance.

To demonstrate compliance with 10.1 (below), the gangmaster should be able to produce copies of supporting documentation that confirms a person's entitlement to work in the UK (copies mean a photocopy or recording of the document electronically). The specified documents in question are detailed in the:

- Immigration (Restrictions on Employment) Order 1996 (for workers employed from 27 January 1997 to 30 April 2004)
- Immigration (Restrictions on Employment) Order 2004 (for workers employed since 1 May 2004)

The guidance on this subject is available in the Home Office publication "Comprehensive guidance for United Kingdom employers on changes to the law on preventing illegal working" or on the Home Office Immigration and Nationality website under preventing illegal working.

The gangmaster 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:

Legality of Workers – Section 8 of the Asylum and Immigration Act 1996

- 10.1 **M** All workers are legally entitled to work in the UK. Employers will be required to show they have complied fully with Section 8 of the Asylum and Immigration Act 1996 in relation to workers employed since January 1997.
- 10.2 **R** There should be no evidence of student workers (who generally have the limited right to work as part of their leave to remain in the UK) working in excess of 20 hours per week during term time.

Trade Union Matters

- 10.3 **M** Workers are not prevented from taking trade union membership and are not penalised for doing so.
- 10.4 **R** The gangmaster 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 labour user who has replaced the worker on strike.

Appendix 1: Record Keeping

Guidance

The licence conditions attached to the main Gangmasters (Licensing) Act 2004 requires in addition to the above provisions, that the gangmaster keeps the following records. These are appended for information. Most are included in the main body of the licensing standards, especially Section 8 (Sub-contracting) and Section 9 (Identity Issues). Records may be kept manually or electronically.

Any shortcomings in this section alone will not count towards the scoring of errors as part of any inspection, except where they appear in the main body of the licensing standards above.

1. Every gangmaster must record, as soon as reasonably practicable, the following details in relation to every application received from a worker:
 - the date the terms between the licence holder and worker were agreed
 - 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 gangmaster)
 - 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 terms are agreed between the licence holder and the labour user
 - 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) and type of work 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 they seek 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 gangmaster 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 gangmaster must record, as soon as reasonably practicable, the following details relating to other licence holders:
 - 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 gangmaster 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 UK premises or the Authority within two working days. All records may be kept in written or electronic form.

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