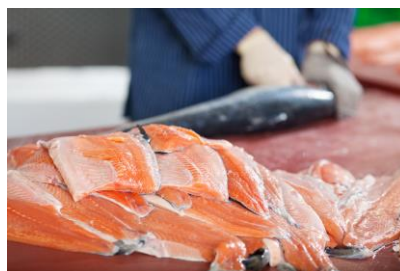




Gangmasters &
Labour Abuse Authority

Licensing Standards

January 2020



Working in partnership to protect vulnerable and exploited workers

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Part One

1. Introduction

- 1.1. The Gangmasters and Labour Abuse Authority (GLAA) protects workers from exploitation in agriculture, shellfish gathering and food and drink processing and packaging. The GLAA operates a licensing scheme for those acting as a 'gangmaster'.
- 1.2. Part One of this document provides background information on the GLAA licensing scheme. Part Two presents the GLAA's 'licensing standards'. The licensing standards are the conditions of a GLAA licence. The standards comprise the requirements set out in the Gangmasters (Licensing Conditions) Rules 2009 plus other relevant legal requirements. This version of the licensing standards replaces the version issued in May 2012.
- 1.3. For more information, please see the GLAA website, www.gla.gov.uk, or contact the Authority by:

Telephone: [0345 602 5020](tel:03456025020)

Email: licensing@gla.gov.uk

2. Who needs a licence?

- 2.1 Section 4 of the Gangmasters (Licensing) Act 2004 defines the term 'gangmaster'. Detailed guidance on who needs a licence is available on the GLAA website or by contacting the GLAA helpline. Acting as a 'gangmaster' includes:
 - supplying labour to agriculture, horticulture, shellfish gathering and food processing and packaging
 - using labour to provide a service in the regulated sector, or
 - using labour to gather shellfish.
- 2.2 A licence can be granted to any kind of legal entity, including individuals (sole traders), limited companies, unincorporated associations or partnerships.
- 2.3 The GLAA takes a wide interpretation of the term 'supply'. 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. Labour includes all workers, whether temporary or permanent.
- 2.4 If the work is undertaken in the UK, a licence is required regardless of where the business is located.

- 2.5 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 GLAA 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.
- 2.6 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.
- 2.7 There are exemptions from the licensing scheme for some specific circumstances. Advice on these exclusions is available from the GLAA helpline or 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 businesses.
- 3.2 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.
- 3.3 Further advice on how the licensing standards might apply to an individual business can be obtained from the GLAA.

4. Assessing compliance and GLAA inspections

- 4.1 The GLAA adopts a proportionate approach when applying the licensing standards. The GLAA 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.
- 4.2 Workers employed by a labour provider should expect to receive the same fair treatment irrespective of which sector they work. If a business wishes to obtain or hold a GLAA licence the GLAA will consider its conduct beyond the licensed sectors as well as within them. This will be taken into account when making a decision as to whether the business is fit and proper and its compliance with all of the licensing standards.
- 4.3 Where non-compliance is found, where appropriate the GLAA will refer this non-compliance to our partners who may decide to take action separate to any action the GLAA may take. Our partners include but are not limited to:
- the Pensions Regulator where there is a manipulation of auto-enrolment pensions

- HMRC for breaches of Standard 2.1 concerning payment of tax
- the National Minimum Wage team at HMRC for breaches of Standard 2.2, 3.3 and 7.1 concerning non-compliance against the NMW and / or the NLW or the relevant Agricultural Wages team
- the Police where there is suspected criminality
- Local Authorities for serious breaches of Standard 4.1 and 4.2 concerning worker accommodation
- Information Commissioner's Officer for breaches of Licensing Standard 5.5
- the Health and Safety Executive for serious breaches of Standards 6.1 – 6.3, and
- the Insolvency Service where there are grounds for a potential director disqualification.

- 4.4 The GLAA 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.
- 4.5 Compliance with the licensing standards is assessed, where necessary, through inspections of applicants and licence holders.
- 4.6 During an inspection, the applicant or licence holder may be asked to give details of contracts with clients. The inspection may include visiting your clients to check the place of work. The GLAA may also interview workers. The inspection will proceed based on the workers' responses and any other relevant factors.
- 4.7 The applicant or licence holder may be asked to provide documentary evidence (such as written terms and conditions with workers and clients, contracts, wage records etc) to demonstrate compliance with the licensing standards. Where an applicant is inspected and they are already operating in non-GLAA regulated sectors, the Authority may seek the applicant's agreement to inspect those activities.
- 4.8 A new business will be expected to show that it has systems in place that demonstrate its ability to comply with the standards.
- 4.9 The information collected during an inspection will assist the GLAA in determining whether a licence should be granted or refused for an application or revoked for an existing licence holder.
- 4.10 The inspection will test the relevant licensing standards, which will result in an overall score. Each standard has an associated score. Standards designated as 'critical' are worth 30 points. All other standards are worth 8 points, except licensing standard 1.4 which can score up to 16 points and Licensing Standard 2.5 which can score 8 or 30 points depending on the breach. There are three possible outcomes:

No issues identified

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

Inspection score is below 30 points

- 4.12 Additional Licence Conditions (ALC) will be attached to the licence. An ALC is a specific requirement which a licence holder must comply with. Usually, ALCs will be against individual non-critical standards where non-compliance has been identified. The licence will become conditional on those non-compliances being corrected. The GLAA will explain what measures need to be taken to rectify identified non-compliances.

Inspection score is 30 points or more

- 4.13 The application or licence will usually be refused or revoked. However, the GLAA may consider attaching ALCs where it is proportionate to do so after considering the extent and nature of the non-compliance.
- 4.14 If an application is refused, the applicant must not trade in the licensable sectors. Any revocation will be with or without immediate effect depending on which standards are failed. 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.

5. Applying for a licence

- 5.1 You can apply for your GLAA licence online at www.gla.gov.uk or by telephoning the GLAA helpline on 0345 602 5020. Please read the GLAA's Application form guidance before applying for a licence (available on the GLAA website or by ringing the GLAA helpline).
- 5.2 The first stage of applying for a GLAA licence is to complete the 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.
- 5.3 Any information submitted in an application will be processed in accordance with the Data Protection Act 2018. The GLAA is the data controller for the purposes of this Act. Information provided may be shared with other government departments and law enforcement agencies.
- 5.4 Once your application has been submitted, the GLAA will run checks with other UK enforcement agencies and if required, authorities in other countries. You may also be inspected or asked to provide additional information. The GLAA Licensing team will then decide whether a licence can be granted.
- 5.5 Once your application is approved, your licence will usually be granted for a 12 month period. The GLAA 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.

- 5.6 The current fee levels are available on the GLAA website. Alternatively, please ring the GLAA helpline for the latest levels. Please be aware that fees are non-refundable.
- 5.7 Details of all licence holders and applicants are available on the GLAA Public Register, available online at www.gla.gov.uk. A list of revoked licences is also available on the GLAA website.
- 5.8 Please be aware that the GLAA will usually automatically refuse applications where it is proportionate to do so in the following circumstances:
- if an applicant, proposed Principal Authority and / or any person named or specified in the application has been found not to be fit and proper. This applies for at least two years from the date of that decision.
 - where an applicant, proposed Principal Authority and / or any person named or specified in the application has been refused or revoked twice within a two year period. This applies for at least two years from the date of the second decision.
- 5.9 The GLAA will also consider automatically refusing an application in the following circumstances:
- if an applicant, proposed Principal Authority and / or any person named or specified in the application is found to have been connected to someone who has been deemed not to be fit and proper. This applies for at least two years from the date of the fit and proper decision.
 - where an applicant, proposed Principal Authority and /or any person named or specified in the application is found to have been connected to someone who has been refused or revoked twice within a two year period. This applies for at least a two year period from the date of the second decision.
- 5.10 Further, paragraphs 5.8 and 5.9 will apply if standards 1.1 and 3.1 have been failed. These paragraphs will also apply if standards 3.2 and 3.3 have been failed where forced labour has been identified.
- 5.11 The above will apply unless exceptional circumstances can be demonstrated to justify why the application should be considered on its own merits.

6. Who should be named on a licence?

- 6.1 A licence authorises a business to act through named individuals or specified posts. The Public Register displays those named or specified on a licence.
- 6.2 Anybody with a responsibility for negotiating contracts with clients for supplying workers or providing services needs to be named or specified on the licence. For licence holders with a turnover of less than £5 million a year in the GLAA regulated

sectors, actual names are required. For licence holders with a turnover of £5 million or more, individuals can be specified by job titles.

- 6.3 For licences authorising the use of a worker to gather shellfish, supervisors or group leaders must be individually named on the licence (please see licensing standard 6.5 for further details).

7. Appealing against a GLAA decision

- 7.1 There is a right of appeal against any decision of the GLAA:

- 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

- 7.2 Any decision the GLAA makes will explain the process for making an appeal. Guidance on the appeals process is available from the Gangmasters Licensing Appeals Secretariat. The Secretariat can be contacted at:

Gangmasters Licensing Appeals

Alexander House, 14-22 The Parsonage, Manchester, M3 2JA

DX address: DX 743570 Manchester 66

Telephone: 0161 833 6100 Fax: 0161 832 0249

Email: gangmastersappeals@justice.gov.uk

- 7.3 In Northern Ireland, the Secretariat may be contacted at:

Office of the Industrial Tribunals and the Fair Employment Tribunal

Gangmasters Licensing Appeals, Killymeal House, 2 Cromac Quay, Belfast, BT7 2JD

Telephone: 02890 327 666 Fax: 028 9025 0100

Email: mail@employmenttribunalsni.org

8. Criminal offences

- 8.1 The Gangmasters (Licensing) Act 2004 includes a number of criminal offences. The GLAA enforces these criminal offences on behalf of the Home Office (in Great Britain) and the Department of Agriculture and Rural Development (in Northern Ireland).

Section 12(1) Offence: Acting as a gangmaster without a licence

8.2 It is illegal to act as a gangmaster without a licence. The maximum penalty for operating without a licence is 10 years in prison and a fine.

Section 12(2) Offence: Possessing false documents

8.3 A person commits an offence if, in an attempt to make another person believe they are licensed, they possess or control:

- a relevant document that is false or they know or believe is false
- a relevant document that was improperly obtained and or that they know or believe was improperly obtained, or
- a relevant document that relates to someone else

8.4 'Relevant' means any document the GLAA issues in connection to a licence and being licensed.

Section 13(1) Offence: Using an unlicensed gangmaster

8.5 It is illegal to use an unlicensed gangmaster. The maximum penalty for this offence is 6 months in prison and a fine.

Section 18(1) Offence: Obstruction

8.6 It is an offence to obstruct a GLAA officer in the course of his or her duties. It is also an offence to fail to comply, without reasonable cause, with any requirement made by a GLAA officer.

9. Complaints

9.1 If you are dissatisfied with the service you receive from the GLAA, please write to:

Complaints
Gangmasters and Labour Abuse Authority
PO Box 10272
Nottingham
NG2 9PB

Email: complaints@gla.gov.uk

Part Two

GLAA licensing standards

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

References to a 'licence holder' includes applicants for a GLAA licence.

Licensing standard 1: Fit and proper test

1.1 Critical: Fit and proper

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

Please note

- The GLAA will assess all relevant factors in considering whether a licence holder acts in a fit and proper manner.
- The factors the GLAA 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 / or any person named or otherwise specified in the licence has:
 - intentionally obstructed the GLAA. This includes preventing an inspection being conducted without reasonable cause
 - been convicted of any criminal convictions unspent under the Rehabilitation of Offenders Act 1974 or the Rehabilitation of Offenders (Northern Ireland) Order 1978. Particular consideration will be given to offences of dishonesty, fraud, violence, forced labour, 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, Energy and Industrial Strategy, Department for Work and Pensions, HM Revenue and Customs (HMRC), Health and Safety Executive (including where the HSE issue a Prohibition Notice), UK Visas and Immigration, Police, local authorities or 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 have not demonstrated 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. This includes deliberately under declaring turnover, or

- been influenced by a third party who the GLAA considers not fit and proper.
- The GLAA treats each case individually, taking account of the seriousness of, and circumstances surrounding the matter in question. The GLAA 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.

1.2 Critical: Principal Authority competency test

The GLAA will consider the Principal Authority's competence and capability to hold a GLAA 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 GLAA licensing standards and / or has sufficient management processes.

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 GLAA.

Please note

- This includes notifying the GLAA 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 GLAA'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 GLAA within 20 working days if:

- the Principal Authority changes (16 points)
- the licence holder, Principal Authority, directors, company secretary or partners are convicted of any criminal offence or receive an alternative civil sanction (16 points)
- the business enters administration, liquidation or is made bankrupt (16 points)
- the business VAT number changes (16 points)
- the trading name changes (16 points)
- any directors, company secretary, partners or other individuals named on the licence change (8 points)
- any contact details for the business change (8 points)

Please note

- Please see paragraph 4.10 of Part One for information on the scoring system of the licensing standards.
- Non-compliance with this standard will contribute a maximum of 16 points to a licensing standard compliance score. If more than one non-compliance is identified, the standard will only be failed once with only the highest score being accrued. The 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 not be failed if the licence holder can provide a reasonable explanation for why they have not notified the GLAA within the timescale required.
- A licence will expire if a licence holder's registered company number or Unique Tax Reference change. A licence may also expire if the business is in liquidation.

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) Act 2003 apply must:
 - be registered with HMRC 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 HMRC in a timely manner.
- A licence holder who exceeds the VAT threshold must be registered with HMRC 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: Paying Wages

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

A licence holder must:

- pay a worker sick, maternity, paternity and adoption pay to which they are legally entitled
- maintain records to show that a worker receives paid sick, maternity, paternity and adoption pay to which they are legally entitled
- must enrol appropriate workers into a workplace pension scheme and keep sufficient records to prove compliance.

2.4 Payslips

A licence holder must provide workers with itemised payslips at or before the time when wages or salary is paid.

Please note

The payslip should contain the gross and net amount of wages or salary and the amounts and purposes of any deductions.

2.5 Critical: Holiday pay

- A licence holder must maintain records to show that a worker receives paid annual leave to which they are legally entitled (8 points)
- A worker must be paid any holiday pay to which they are legally entitled during the course of their engagement (30 points)
- Where a worker's engagement is terminated during the course of a leave year a licence holder must give them payment in lieu of any accrued and unused holiday entitlement (30 points)
- A licence holder must not illegally prevent a worker from taking annual leave (30 points)

Please note

Non-compliance with this standard will contribute a maximum of 30 points to a licensing standard compliance score.

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

Licensing standard 3: Forced labour and mistreatment of workers

3.1 Critical: Physical and mental mistreatment

A licence holder must not:

- subject a worker to physical or mental mistreatment
- subject a worker to sexual violence
- make threats to worker or others
- abuse a worker because of any vulnerability and must pay due regard to the Equality Act (2010)
- deceive a worker about the nature of the work, pay or living conditions
- subject a worker to isolation, or
- subject a worker to abusive working, living conditions or excessive overtime.

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
 - require the worker to notify the licence holder, or any person connected to the licence holder, the identity of any future employer
 - 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 by the licence holder, labour user or intermediary the worker:

- cannot be required to repay a sum greater than the sum loaned, and
- 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 any of the following grounds:

- 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 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.
- The GLAA will take a proportionate view in deciding on whether to fail this standard for minor infringements or easily fixable issues.
- 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
 - if it is in an area subject to selective licensing, or
 - if the accommodation is on a caravan site which requires licensing.
- A licence holder who has a House of Multiple Occupation licence, must comply with any conditions of that licence.
- 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.

Licensing standard 5: Working conditions

5.1 Rest periods, breaks and annual leave

A worker must be able to take the rest periods and breaks to which they are legally entitled.

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 also does not apply to unofficial strike action.

5.5 Confidentiality

A licence holder must meet its responsibilities in terms of compliance with Data Protection legislation and ensure that personal data and information about workers is held securely and is not disclosed without consent or other legal authority.

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 a worker or work seeker on the grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

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
- a 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)
 - have an applicable MOT certificate if required
 - have appropriate insurance, including cover for all circumstances of hire or reward regardless of the size of the vehicle
 - 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 or reward must:
 - have a Public Service Vehicles (PSV) Operator's licence, and
 - have documentary evidence that the vehicles are registered and maintained as PSVs and have a Certificate of Initial Fitness.
- A driver used by the licence holder 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 or reward
 - comply with rules covering drivers' hours and tachographs, and
 - carry workers in a safe manner.

Please note

- In assessing whether a vehicle has 'obvious or identifiable' defects, the GLAA will apply a common sense test of whether the vehicle is clearly unsafe, for example, without seatbelts or with unsafe seats and doors.
- The GLAA 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 named on the licence. The supervisor / group leaders must:

- have knowledge of local tide tables (and have an accurate watch) and forecast weather and local conditions (including 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 as well as appropriately maintained and correctly used emergency equipment (including flares and whistles in case of fog or mist)
- 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 and / or 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, and

- 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.

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, and
- 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 – Life jackets and life rafts

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

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: Using workers to gather shellfish – 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, or
 - giving or not withdrawing consent to disclosing information about that worker other than what is required for the work finding services.
- 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.

Notifying details of fees and services

- 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.

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

Agreeing terms with workers

- Before supplying a worker to a labour user, a licence holder must agree the terms which will apply between the licence holder and the worker. The terms must include:
 - 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 particular assignment
 - the pay rate or the minimum rate to be expected
 - 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.
- A licence holder must record all the terms, where possible in one document, and give the worker the written terms before the licence holder provides any services to the worker. This does not apply if the worker has been given a

written statement of employment particulars in accordance with Part I of the Employment Rights Act 1996.

- 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 fifth working day following the date the variation was agreed.

Worker records

A licence holder must record as soon as reasonably practicable:

- 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, 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. Records may be kept either in written or electronic form.
- 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 two working days.

7.4 Labour user records

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

- 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
- details of enquiries about the labour user and the position they want to fill, including copies of all relevant documents and dates of their receipt, 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 GLAA within two working days.
- Records may be kept in either written or electronic form.

7.5 Restriction on charges to labour users

A licence holder must not seek a transfer fee from a labour user, or seek to enforce any other contractual terms, for a worker to be employed by the labour user or for another licence holder to supply that worker to the labour user if:

- the contract between the licence holder and labour user does not include an option for the licence holder to choose for an extended period of supply, as specified in the contract, at the end of which the worker will transfer without charge
- the worker is employed by the labour user or supplied by another licence holder after eight weeks from when the worker last worked for the licence holder or 14 weeks from the first day on which the worker started work for the labour user, whichever date is later.

Please note

Where a labour user opts for an extended period of supply, the licence holder must supply the worker for the entirety of that period on terms no less favourable to the labour user than those that applied between the licence holder and the labour user

before the licence holder received notice that the labour user wished to opt for the extended period of supply. If there has been a period of more than 42 days where a licence holder has not supplied the worker to the labour user, then this will break continuity for calculating the start of the 14 week period.

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 GLAA 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 GLAA'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.

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