

GLA Brief

Issue 16 – January 2012: How Licensing Applies to the Businesses Based Outside the UK

This Brief explains how licensing affects the businesses based outside the UK as well as the labour providers and labour users who use such businesses

This guidance supersedes all previous guidance issued by the GLA on this issue and is in force with immediate effect.

Introduction

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

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

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

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

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

What does supply mean?

Supply has a wide meaning and includes:

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

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

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

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

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

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

How to apply for a licence

Full guidance on how to apply is on our website or you can request a hardcopy by ringing us. In addition to the normal application process, businesses based overseas will be required to:

- Send us any documents we request to support your application. This will include evidence of ID for the person completing the form, sample contracts with workers and clients and evidence of compliance with law in the country you are based – this is typically details of any licence or registration held. We may then run checks with the relevant authorities in your home country to verify that you are compliant with your domestic law,
- Go through our application inspection process. This involves attending an interview in the UK, generally at or near a convenient location. During this interview, you will be asked questions testing whether the business complies, or will comply, with the conditions of our licensing scheme.

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

What are the conditions of a GLA licence?

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

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

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

If a business provides other services and then charges the worker, then we would check that the services offered were genuinely optional. These services might include helping complete application forms and arranging travel and accommodation. If we find that use of these services was mandatory for someone to have a job, then this Standard would be failed.

How the GLA checks compliance

Licence holders must continue to comply with the GLA Licensing Standards after the licence has been granted. If we believe a licence holder based outside the UK is no longer compliant with our Standards, we can conduct a compliance inspection. The principal authority for the business will be required to travel to the UK to be interviewed. We will also interview the workers supplied by that licence holder to check how they were recruited, even if the licence holder doesn't have an ongoing relationship with the worker.

Businesses based outside the European Economic Area (EEA)

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

<http://www.hmrc.gov.uk/nic/work/emps-abroad.htm>

Posted Workers

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

Any business based outside the UK who is supplying workers to the GLA regulated sectors under the Posting of Workers Directive **must be licensed by the GLA**. They should also comply with any requirements which apply in the posting country, which the GLA will review to ensure that a company is compliant with the legislation in its own country that compares to the licensing standards, and is therefore "fit and proper" to hold a licence.

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

You can find out more about these rules on HMRC's website:

<http://www.hmrc.gov.uk/nic/work/new-rules.htm>

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

Offences

It is illegal to trade without a licence if one is needed. If the business trading illegally is based outside the UK, the potential criminal offence will be investigated as fully as possible. We will also work with the relevant authorities in that country, including sharing information and conducting joint investigations.

It is also against the law to use someone unlicensed. We will launch criminal investigations into any UK labour provider or labour user who use someone unlicensed who is based overseas. The penalty for using someone unlicensed is up to 6 months in prison and / or a £5,000 fine.

Any licence holder using an unlicensed business based outside the UK also risks having its licence revoked.

Further information

If you would like any help or guidance, more information is available on the GLA website, www.gla.gov.uk. You can also contact our helpdesk:

Email: enquiries@gla.gsi.gov.uk

Telephone: +44 (0) 845 602 5020

If you have received a hard copy of this Brief but would prefer electronic versions in future, please email communications@gla.gsi.gov.uk