

A licence to operate

New measures to tackle exploitation
of temporary workers in the UK
agricultural industry

Temporary Labour
Working Group

November 2004

Temporary Labour Working Group

This report is published on behalf of the Temporary Labour Working Group, an alliance of companies, trade associations and trade unions that has come together to tackle the problem of illegal activity by gangmasters in the agricultural industry.

GROUP MEMBERS

RETAILERS: ASDA, The Co-operative Group (CWS) Ltd, Marks & Spencer, Morrisons, J Sainsbury Ltd, Somerfield Stores Ltd, Tesco, Waitrose | FOOD MANUFACTURING: Premier Foods | PACKERS, WHOLESALERS, IMPORTERS, RETAILERS: Fresh Produce Consortium | GROWERS: National Farmers' Union | TRADE UNIONS, AGRICULTURAL WORKERS: Trades Union Congress, Transport and General Workers' Union | LABOUR PROVIDER: Fusion Personnel | LABOUR PROVIDERS: Association of Labour Providers (May 2004 onwards) | GROUP CO-ORDINATION AND EXPERTISE IN THE APPLICATION OF CODES OF LABOUR PRACTICE: Ethical Trading Initiative.

The content of this report is based on a two-year programme of co-operation and research and represents the consensus reached within the group. The report is intended primarily for policy makers in government and industry and is available at www.ethicaltrade.org.uk

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Glossary and abbreviations

ALP: Association of Labour Providers

Assessment: for the purposes of this report an assessment is a study to determine whether, and to what extent, labour practices comply with a code of conduct. Assessments referred to are based on the collection and corroboration of verbal, documentary, visual and physical evidence gathered at the workplace or off-site. We have chosen the term assessment (of labour providers) to distinguish this technique from (i) audits of labour conditions that take place in other parts of the fresh produce supply chain and from (ii) any form of audit or inspection that may be developed by the Gangmasters Licensing Authority.

Defra: Department of Environment Food and Rural Affairs

ETI: Ethical Trading Initiative

DWP: Department of Work and Pensions

FPC: Fresh Produce Consortium

Gangmaster: a provider of temporary labour to the agriculture and food processing industry, also referred to as a labour provider

Labour user: the farmer/grower or food processing firm that contracts gangmasters to supply temporary labour

NI: National Insurance

NIC: National Insurance contributions

Sub-contractor: another labour provider that may be used to source labour to fulfil a contract

TGWU: Transport and General Workers' Union

Young person: worker aged under 18

1

Summary and recommendations

1.1 Defining the issue

The recent deaths of 23 migrant cockle pickers in Morecambe Bay threw a public spotlight on an issue that has concerned the industry and government for over a decade. The exploitation of temporary workers in the UK agricultural and food processing sector is a feature of today's gangmaster system. The lack of effective controls on these labour providers has helped create an environment where it is easy for the unscrupulous to evade taxes and exploit the benefits system as well as the workers they employ. Labour users have no reliable way of distinguishing the good from the bad employers. Few of the workers involved are aware of their rights, many have limited English and all are vulnerable to exploitation.

There is worrying evidence that the exploitation of workers is worsening. Severe forms of abuse have been reported, including extreme forms of coercion and violence as well as health and safety malpractice leading to fatal accidents. Workers have been forced to work long hours for sub-minimum wages and subjected to poor living conditions. **There is strong support in the industry for licensing and registration of labour providers in order to combat rising levels of exploitation and criminal activity.** (Chapter 2, sections 2.1 – 2.3).

1.2 The Temporary Labour Working Group and the Gangmasters (Licensing) Act

The Temporary Labour Working Group, a consortium of major retailers, growers, suppliers, labour providers and trade unions was set up in September 2002, convened by the Ethical Trading Initiative (ETI), with co-operation from government. Its aim was to establish a set of minimum standards for labour providers which could be enforced by new statutory controls. Partly as a result of the Group's lobbying activities a Private Member's Bill was enacted in July 2004 as the Gangmasters (Licensing) Act. This lays the foundations for a licensing and registration scheme which will come into force in 2005. (Chapter 2, sections 2.3 – 2.6))

1.3 The Group's code of practice and assessment procedures

The Group took the view that a licensing and registration system had to be underpinned by a code of practice for labour providers and a robust method demonstrating compliance that probes workers' real conditions of employment. Chapters 3 and 4 of the report detail how the code of practice and assessment

procedures were developed and tested. Our code of practice and associated tools for labour providers establish legal requirements and accepted best practice (the code of practice is included in Appendix 2). **These standards now provide an industry-agreed benchmark against which labour providers can be independently assessed. We commend the code to the Gangmasters Licensing Authority and hope it will form the core of the new licensing arrangements. We call upon labour providers to implement this code now and invite them to use the tools we have developed to help them.**

The code and audit procedures developed to assess compliance with the code were trialled with six labour providers in Lincolnshire. Existing enforcement has prioritised tax evasion, benefit fraud and illegal working but our field trials demonstrate that it is also possible to identify where workers are being exploited and how employers must improve working conditions. Our trials revealed serious and systematic abuses of workers' rights including payment of sub-minimum wages, excessive working hours and dangerous working conditions. **A worker-focused inspection such as this is a necessary part of law enforcement and should be one component of a licensing regime.**

1.4 Making the legislation work

The new legislation has the potential to achieve benefits across the industry and society as a whole. A national register of licensed labour providers will help introduce fair competition between legitimate operators and place the responsibility on labour users and retailers to ensure that only their services are used. Government and tax payers will benefit through increased revenue from income tax and National Insurance and reduction in benefit fraud. Workers themselves will benefit as their conditions of work will be scrutinised routinely and the worst employers will be driven out of business. (Chapter 5)

The new Act, however, requires wide support and adequate resourcing if it is to deliver its potential benefits. Government, supermarkets, growers, manufacturers, packers and labour providers all have a responsibility to stamp out exploitation of the workers who produce our food. All stakeholders must work effectively together to ensure the primary legislation is supported by the best possible mechanisms to license, register and assess labour providers. **Crucially the Government must provide adequate resources to enable the newly-established Gangmasters Licensing Authority to implement, police and enforce the legislation.** Industry stakeholders must also play their part to ensure that they promote a culture of compliance with the law and in Chapter 5 we set out the challenges for labour providers, growers, packers, food manufacturers and retailers.

The Temporary Labour Working Group will continue to work together to create momentum for change in the industry in advance of the legislation coming into force. The report concludes with a summary of our programme for the year ahead.

1.5 Summary of main recommendations

On labour providers

- All labour providers should begin implementing the appended code of practice with immediate effect.
- All labour providers should take responsibility for informing the workers they employ about their rights.
- Government (Defra) should conduct a review of current advice and guidance for labour providers to make it more accessible and relevant to the needs of today's industry. Defra should explore the need for a 'one-stop-shop' to advise labour providers on good practice and compliance with the law.

On assessment of labour providers

- A worker-focused inspection is a necessary part of law enforcement and should be one component of a licensing regime.
- The standards enshrined in our code of practice now provide an industry-agreed benchmark against which labour providers can be independently assessed. We urge the Gangmasters Licensing Authority to adopt the code as the core of the new licensing arrangements.
- The Gangmasters Licensing Authority should draw on the experience gained through the application of the assessment approach described in this report in developing audit tools to underpin the introduction of licensing.
- Where an additional assessment is required by organisations in the supply chain this should complement and not duplicate any audit undertaken for licensing purposes.
- Defra should lead on the development of confidential means for workers, trade unions and other organisations to report complaints about labour rights abuses in the sector.

On licensing and registration

- The Government should ensure that the Gangmasters Licensing Authority is adequately resourced to carry out the full range of its duties, including investigation of suspected breaches of licence conditions.
- The Government should ensure joined-up enforcement activity between the Gangmasters Licensing Authority, government departments and existing enforcement bodies such as the Inland Revenue.

All industry stakeholders

- All industry stakeholders must work effectively together to ensure the primary legislation is supported by the best possible mechanisms to license, register and assess labour providers.
- Growers, packers, food manufacturers and retailers should play their part in promoting a culture of compliance with the law.

2

Background and context

The exploitation of temporary workers in the UK agricultural sector is a pressing issue for the public and industry alike. Retailers, suppliers, trade unions and the UK Government have been concerned about the issue for some time. This chapter describes early attempts to tackle the illegal operators. It explains how the Temporary Labour Working Group was established and why it set out to establish a set of minimum standards for labour providers, and how these might be enforced by new statutory controls.

2.1 Defining the problem

The exploitation of temporary workers in the UK agricultural sector is a pressing public and industry issue. The tragic and shocking deaths of 23 migrant cockle pickers (the actual numbers may never be known) at Morecambe Bay in February 2004 intensified public concern about the activities of 'gangmasters' or labour providers. Media comment and exposés of this issue are now a weekly occurrence.

The UK's agricultural system is highly seasonal and fluctuations in demand for labour have been met by a system of gangmasters for well over 100 years. This activity is legal and much needed, but as the supply of domestic labour for such jobs has fallen, unscrupulous employers and even criminal gangs have presented themselves as legitimate businesses. Limited state scrutiny of these employers has helped create an environment where it has been easy for them to evade taxes and exploit the benefits system as well as the workers they employ. While growers, packhouses and food-processing facilities have a clear need for temporary workers, they have no reliable way of distinguishing the good labour providers from the bad. Some may also use unscrupulous labour providers as a way of cutting costs. Complex sub-contracting, sophisticated document forgery and the presence of many workers who speak little English, make it difficult to identify those labour providers who are operating illegally or to define the scale of the problem

There is also disturbing evidence that the exploitation of temporary workers is a significant and growing problem. For example, severe forms of abuse have been reported, including extreme forms of coercion and violence as well as health and safety malpractice leading to fatal accidents. Workers have been forced to work long hours for sub-minimum wages and subjected to poor living conditions.

The extent of illegal practices means that legitimate operators find it increasingly hard to compete within the law.

2.2 A decade of action

The agricultural industry has expressed growing concern about this issue for a number of years. Voluntary codes of practice for growers and packers have been developed and implemented since 1997¹. The Transport and General Workers' Union has been campaigning for tougher controls on gangmasters for the past decade. Supermarkets have raised awareness of this issue with their suppliers and provided guidance on the employment of temporary labour. None of these measures has tackled the problem effectively.

The UK Government has also taken action to analyse the situation and find practical means to address the issues. Much of the Government's enforcement effort has concentrated on questions of tax evasion, benefit fraud, immigration and illegal working. In September 2003 the influential Environment Food and Rural Affairs Select Committee issued a report on the gangmaster system and followed this up with a second report in May 2004². In January 2004, Jim Sheridan, the MP for West Renfrewshire, introduced the Gangmasters (Licensing) Bill into Parliament. This had cross-bench support in both the House of Commons and the House of Lords as well as the active support of our Group. In May 2004, the Environment Select Committee changed its original view, concluding that the time had come to introduce statutory licensing of gangmasters. When the Government gave its strong backing to the Bill it was a clear sign that the days of industry self-regulation through voluntary codes were over. In July 2004 the Bill became an Act, providing for a statutory licensing scheme and an associated register of labour providers.

2.3 Temporary Labour Working Group

In April and May 2002, the Ethical Trading Initiative (ETI) organised two consultative seminars to discuss problems in and solutions to the provision of temporary labour in the UK food and agricultural industry. Over 100 growers, packers, retailers, labour providers, trade unions, manufacturers and civil servants attended. Despite this diversity a remarkable consensus was reached. The unanimity of opinion was that the abuses, evasions and fraudulent activities were getting more frequent and that this trend would continue without new controls on labour providers. Participants called for the establishment of a licensing and registration scheme for labour providers that would give an assurance that each was a legal and responsible employer.

¹ The Fresh Produce Consortium *Temporary packhouse labour code of practice 1997* and the National Farmers' Union *Casual and seasonal workers: code of practice for employment 1998*

² Environment Food and Rural Affairs Select Committee. Fourteenth Report of 2002/03

³ See inside front cover for full list of members

Following this consultation, ETI convened a cross-industry working group³, known as the Temporary Labour Working Group, with this principal objective in mind. The focus of our work has been on measures to routinely identify and address labour abuses. We set out to consider the merits of statutory and voluntary mechanisms to achieve this end, to lobby for necessary legislation and define the roles and responsibilities of all key stakeholders in promoting compliance with the law. We also aimed to develop practical tools to help those legitimate labour providers who are undermined by those who are not. The full terms of reference are given in Appendix 1.

During the course of our work we became increasingly aware that the problems associated with temporary labour provision extend far beyond food and agriculture. However, there was an urgency for us to act and we decided to capitalise on the consensus we had established within this sector in order to identify approaches that could improve conditions for temporary workers and add value to the existing enforcement effort. We believe our findings may have application elsewhere and hope they will be of value to the wider public policy debate at this crucial time.

2.4 Defining our focus

In exploring this multi-faceted problem we returned many times to one core issue. Labour providers can and do avoid their legal responsibilities to workers by concealing or blurring their identity as the employer. The bulk of our work has focused on answering the questions that address this issue:

- What is good practice in the operation of labour providers' services?
- How does existing law apply to these businesses?
- What system of checks and balances is required to verify that the practices of labour providers are lawful?
- How can legitimate labour providers make themselves visible so that responsible businesses will choose only their services?

We set out with the belief that this line of inquiry could add value to existing approaches because of its emphasis on:

- the role of government to enforce law;
- the role of businesses to promote a culture of compliance with the law;
- the need for education and support to legitimate labour providers;
- the need for more effective penalties for illegitimate operators.

2.5 Towards a code of practice and legislation

From the outset the Group took the view that a national register of labour providers was needed and that this should be supported by a new offence of operating without a licence. This view was founded on our considerable experience of applying voluntary

codes within this sector. However, our initial lobbying left us sceptical about the political will to support such change or the time this might take. We therefore decided to develop a code of practice for labour providers and a means of verification that would be robust enough to inform the discussion about licensing and registration should we be successful at getting them onto the political agenda.

Partly as a result of our lobbying, the Gangmasters (Licensing) Act 2004 is now in place. The Act provides for a licensing and registration scheme and we are working closely with Defra to share experience and inform decisions about the conditions of the licence and the requirements for enforcing those conditions. As a licensing and registration scheme will not become fully effective for a further two years, we are urging the entire industry to implement a voluntary code of practice in order to secure immediate improvements and pave the way for the introduction of licensing

2.6 Activities of the Working Group

The table below summarises the activities of Group members from April 2002 to July 2004.

Table 2.1 Activities of Group members

Objective	Key activities	Outcomes to date
Establish a cross-industry Working Group with a common programme.	Research and consultation in the sector. Two public seminars.	<ul style="list-style-type: none"> Over 100 organisations consulted and priorities identified (April–June 2002). Working Group established (September 2002). Terms of reference agreed, detailed work plan approved and resources raised (September 2002–April 2003).
Lobby for the licensing and registration of labour providers.	Lobby Ministers. Awareness raising through the media. Campaign for legislation.	<ul style="list-style-type: none"> Gangmaster (Licencing) Act 2004 provides for a licensing and registration scheme. Heightened public awareness of the problems associated with temporary labour provision in the sector.
Develop code of practice for labour providers.	Draft code and consult industry stakeholders.	<ul style="list-style-type: none"> Draft code tested in field trials and consultation (April 2003–February 2004) Code of practice agreed July 2004

Table 2.1 Activities of Group members

Objective	Key activities	Outcomes to date
Develop system of independent audit of compliance with the code.	Draft and review audit protocol and tools in a series of six field trials. Consult industry stakeholders.	<ul style="list-style-type: none"> • Audit protocol developed and tested in field trials (September 2003–March 2004). • Auditor toolkit and procedures developed. (September 2003–July 2004).
Develop tools to assist labour providers to implement the code.	Research current practice and identify best practice. Develop tools and pilot in trials Consult industry stakeholders.	<ul style="list-style-type: none"> • Tools developed for use by labour providers, such as checklists, documentation and management controls (April 2003–February 2004). • Computer software designed to reduce administrative burden of controls on labour providers (under development January–October 2004)
Contribute to the setting up of an association of labour providers willing to promote responsible practice in the industry.	Identify labour providers willing to engage. Host workshop to discuss challenges and solution in the sector.	<ul style="list-style-type: none"> • Association of Labour Providers launched in February 2004 with the declared intention of promoting observance of the code of practice.

3

Good practice for labour providers

The Group's first objective was to develop a code of practice for labour providers to establish legal requirements and accepted best practice. These standards now provide an industry-agreed benchmark against which labour providers can be independently assessed. This chapter describes how the code of practice was devised, together with the labour provider tools that accompanies it, and our engagement with labour providers. The chapter concludes with the Group's recommendations on labour providers.

3.1 Developing a code of practice

The purpose of the proposed code of practice for labour providers was to set out clearly the standards that businesses must meet to comply with the law and accepted best practice. These standards are intended to set a benchmark against which the employment practices of labour providers can be independently assessed. The code of practice is attached in Appendix 2.

The code was developed following a period of research. This identified the legal obligations placed on labour providers, for example, National Insurance, statutory sick pay and holiday pay. It also identified current practices in labour provider businesses. Existing codes of practice covering packers' and growers' responsibilities for temporary labour were also reviewed.

The code was then developed to align it with the ETI Base Code, which is derived from the conventions and recommendations of the International Labour Organisation. The ETI Base Code is the standard that many UK retailers promote with their suppliers worldwide and is therefore common currency in the UK food industry (this Code can be seen in full at www.ethicaltrade.org).

Various drafts of the code were discussed by government and industry stakeholders represented in our Group. The code was presented to a meeting of 24 labour providers invited to discuss standards in the industry (see section 3.5). It was also shared with audit companies, labour providers and labour users during the course of the trials. At each stage of this process the code was reviewed and revised.

3.2 What the code covers and some issues

The code is organised in four sections, (1) basic business requirements, (2) taking on workers, (3) conditions of employment and (4) treatment of workers. Some of the legal requirements are complex and to ensure the code itself is not too lengthy or detailed the document summarises the legal obligations labour providers must meet and sets out the other standards they should aim to achieve. It also indicates the specific points against which they will be assessed. The minimum legal requirements are detailed in an annex to the code, while the introduction to the code explains that it does not provide a full statement of the law. (Note the annexes are not included in this report but are available on www.lpcode.co.uk)

Although the code sets out the responsibilities of labour providers, it is clear that some aspects require action by the labour user. For example, a labour user is likely to be responsible for provision of Employers' Liability Insurance to cover temporary workers on that work site. Who is best placed to provide workers with health and safety training and ensure health and safety standards are implemented, will depend on who controls the workers and this could be either the labour provider or the user. The code clarifies potential grey areas wherever possible.

Most of the requirements represent minimum standards consistent with UK legislation but in some areas the code requires further protection for workers. However as there are a number of labour providers who do not meet the basic minimum legal requirements, the immediate priority is to ensure that all businesses operate within the law.

3.2.1 Sub-contracting

People working within the industry and government enforcement agencies have identified sub-contracting as a major contribution to illegal activity in this sector. Consequently, the code recommends that sub-contracting should be avoided if at all possible. We believe that a total ban on sub-contracting would prove unworkable in some circumstances. However, it is intended that this code of practice should apply to all labour providers, whether they are sub-contractors or the principal contract holder. Furthermore, the code makes it the primary responsibility of the labour provider who holds the contract to ensure their sub-contractors are compliant with the code.

3.2.2 Underpinning a licensing scheme

From the outset we were sceptical that a voluntary code would have the teeth to deal with the severe problems in the industry. We therefore viewed the code and the assessment protocols as a stepping stone to a statutory licensing scheme. Now that the Gangmaster (Licensing) Act provides for licensing, there is some debate about whether the code of practice can and should be used as the benchmark for the core of the licence conditions. This is because the code goes beyond the provisions of UK law in some areas. This will be for the new Gangmasters Licensing Authority to

determine. However, the government will be canvassing preliminary views to help the Authority make an early decision. **We commend the code to the Authority and hope it will form the core of the new licensing arrangements to avoid the possibility of double certification and auditing.**

3.3 Further guidance for labour providers

In our experience, few labour providers are fully aware of the law and have all the necessary management controls in place to comply with the standards of the code. We recognised the constraints on small businesses that may not have an established culture of record keeping and were concerned to minimise any administrative burdens. We have therefore developed a set of management tools to help labour providers implement the code and to facilitate the process of assessing compliance with it. The tools listed in the table below were developed by drawing on available government advice and the current practices of one labour provider, Fusion Personnel. Further detail is provided in the appendices to the code of practice (available on www.lpcode.co.uk).

Table 3.1 Tools for labour providers

Tool	Purpose
Sample contract (employee)	A checklist of all the terms and conditions that need to be included in an employee contract
Sample contract (labour user)	Checklist of issues and responsibilities that need to be resolved by the labour user and labour provider before entering a contract
Weekly timesheet	Record of hours worked by each worker
Driver's log	Record of driver's licence, nationality
Employee record	Record of the ID details, NI number, Home Office reference, entitlement to work papers etc
Agency contact log	Full details of any previous contact by the labour provider with enforcement agencies
ACU2 form	A non-statutory form developed by the Inland Revenue to record the identity of workers employed
Grievance/disciplinary log	Record of details of any disputes or reprimands
Equal opportunities policy	Model policy document and procedure
Health and safety guidance: <ul style="list-style-type: none"> • Health and safety induction training • Transportation of workers • Risk assessment 	Outline of relevant health and safety issues for each of these subjects
Computer software	Software that enables a labour provider to integrate all the above management systems and paperwork into the business and to link this to the payroll and accounts system.

We feel sure that these tools can be improved by labour providers as good practice is established.

The computer software referred to above will enable labour providers to integrate the recommended procedures within their business in a time-efficient manner. If used to their full capacity, these systems can also link to a labour provider's payroll and accounting functions. In trials, we estimated that this could save a day and a half a week of administrative time for a small business fully committed to implementing the provisions of the code. This software is under development and if successful will go on sale in late 2004.

3.4 Limits on the use of the tools

The experiences of the enforcement agencies have shown that the mere possession of some or all of the above documentation neither guarantees compliance nor any application of its content. This especially applies to health and safety matters and disciplinary and grievances policies. The Inland Revenue form ACU2, although not statutory, is requested by labour users and enforcement agencies as a first indicator of compliance with the law. However, we understand that ACU2 forms often convey false names and there is no attempt at correction by any party.

If the industry is expected to comply with a code of practice in the near future, we must recognise the support that businesses may require in order to do so. While our best practice tools offer some assistance, we believe there are substantial training and awareness needs within the industry. In our experience, many employers are not sufficiently aware of the law or the advice and support that is currently available. In addition, many labour providers complain that when they try to seek advice about their legal obligations it is not always obvious where to go or advice is difficult to access.

3.5 Consulting labour providers on their industry

From the outset it was not at all obvious how to consult labour providers. With no professional association or standards body, each had to be approached on an individual basis. We understood that lawful operators were being undermined by a growing criminal element and believed that an association of those labour providers willing to show leadership in improving standards in their industry could be a driver for change. We set out to discuss this with labour providers.

We identified 160 labour providers who supply the retail members of our Group and they were invited to a gangmaster forum. Sixty companies responded positively and 24 businesses were represented at a meeting on 9 October 2003 that was sponsored by Defra and facilitated by the University of Cambridge. The forum discussed the

problems facing the industry and more detailed feedback was provided by the labour providers following this. The panel overleaf highlights some of the views of the labour providers present at that meeting.

The labour providers present welcomed the Group's proposals for a code of practice provided it was adequately policed. The majority preferred legislation to enforce such a code. Strategically they recognised a need to raise standards within the industry and to raise the profile of legitimate operators. The role of the retailers in supporting any change was also emphasised

3.5.1 The setting up of the Association of Labour Providers

There was a strong feeling at the Cambridge meeting that the businesses present needed someone to speak for them or some sort of umbrella body to represent their views. As a result, the Association of Labour Providers (ALP) was launched on 11 February 2004 with 18 founder members "to ensure that the reputable firms in the sector have a collective voice and to help improve standards". The ALP states that "all companies in the sector will be invited to join, subject to their agreeing to abide by the terms of a strict code of practice".

We welcome the Association of Labour Providers and recognise the contribution that it can make to sharing best practice and representing the legitimate voice of the industry. In July 2004, the Association adopted the Group's code of practice as a condition of membership and is now working within the Group to develop a means of implementation that is acceptable to other stakeholders in the industry. The Association's credibility will rest on its ability to effectively promote the standards in the code of practice and on having adequate support and robust measures to expel those members who do not observe them. These are challenging issues for a small association and its viability is being tested at this early stage. The founding members have invested their own resources in the Association and in taking this responsibility they are exposing themselves to additional risks at a time when the public mood is hostile to their industry.

Labour provider perspectives

They provide an essential service to the agriculture and food industries, without which much of the food processing industry and food supply chain in this country could not function.

Many believed that they could not command a price for their services that reflects the full cost of supplying labour professionally and legally. They believed downward price pressure from retailers to be the key driver.

Short-term ordering patterns from retailers ("just in time delivery") made management of even a flexible labour force problematic and exacerbated problems like long hours.

Non-wage costs (for example, National Insurance, sick pay and holiday pay, insurance and fuelling of vehicles, and Employers' Liability Insurance) amount to a minimum of 30 per cent on top of wage costs.

Many wanted any legislation or code of practice to apply equally to labour users, with assurances that they were paying rates that would allow them to meet all legal obligations.

Many believed they were being undercut by operators who did not meet these costs and a few acknowledged that they were probably not meeting all legal requirements all the time themselves.

Many were critical of what they saw as an unhelpful attitude of the Immigration Service, which was not responsive to their requests for advice. There was a general view that enforcement agencies could play a strong educational role.

Many held the view that government did not do enough to enforce the law and 'cowboy' competitors could operate with impunity.

3.6 Training needs in the industry

Labour providers appear to have weak links with and limited support from organisations that could help them to improve their services and observe the code of practice. Local authorities, the Learning Skills Council, environmental health and Regional Development Agencies should be encouraged to facilitate the adoption of best practice among labour providers. This could be achieved by financing and delivering localised training courses and advice and guidance sessions on the code of practice. Several public bodies are working on this issue, for example Advantage West Midlands and South Holland District Council. However at the moment this is a piecemeal approach and greater co-ordination is required. An analysis of the key skills that labour providers require in order to implement the code and meet the challenge of change within the industry may prove valuable.

3.7 Recommendations on labour providers

As a result of the Group's work, we offer the following recommendations to labour providers and to those who are in a position to support them.

- 1 All labour providers should begin implementing the appended code of practice with immediate effect.
- 2 All labour providers should take responsibility for informing the workers they employ about their rights.
- 3 Government (Defra) should conduct a review of current advice and guidance for labour providers to make it more accessible and relevant to the needs of today's industry. Defra should explore the need for a 'one-stop-shop' to advise labour providers on good practice and compliance with the law.

4

Assessing labour providers for compliance

One of our key aims was to develop an audit or assessment system to measure compliance with the code and we drafted a set of procedures for this purpose. This chapter describes the assessment process, the reporting procedures and the worker complaints system. Field trials enabled us to test the effectiveness of this process, the workability of the code and the good practice tools described in chapter three. The findings of the field trials showed that even reputable labour providers can fall short of the code of practice on some measures. Work is continuing to make the assessment process more robust and we will continue to share our learning with Defra and the Gangmaster Licensing Authority that will be charged with establishing the licensing and registration scheme.

4.1 Description of the assessment process

We drew on the expertise of ETI and five service providers that retailers use in order to develop an assessment procedure to test labour providers compliance with the code of practice. The assessment procedure has the following elements:

Day 1

- Opening meeting with the labour user
- Site walk-around where labour is employed
- Interviews with management at the labour user
- Labour user document check
- Interviews with workers at the labour user site (with language interpretation as necessary)

Day 2

- Opening meeting with the labour provider
- Interview with the labour provider
- Labour provider document check
- Follow-up action
- Agreement of conclusions and key corrective actions

We developed a number of procedures and controls for those conducting an assessment and these are described in Table 4.1 opposite.

Table 4.1 List of protocols and tools for auditors⁴

Document	Description
Assessment guidelines	Help for auditors on the code of practice and aspects of UK law
Pre-assessment questionnaires	Establish initial information relating to LP, LU and premises matters
Assessment protocol	Description of procedures and questions for auditors to follow when conducting an assessment
Worker interview questionnaire	Series of questions for individual or small group use, to establish relevant conditions of work and pay, knowledge of entitlements and rights
Classification of non-compliances	Series of agreed non-compliances: classified as critical, major, minor
Standard reporting procedures	LP report detailing auditor findings, recommendations and good practices Recommendations report (only) to LU
Corrective action plan	Follow-up plan with timescales for corrective action

4.1.1 Reporting on the assessment

A detailed report was produced on the completion of each assessment. This included a list of code non-compliances and time-bound measures to address these issues. Each non-compliance was categorised as critical, major or minor. The rationale for each category is summarised below.

Critical non-compliance: A critical failure to comply with the code of practice that does or could result in:

- serious risk of personal injury or ill health
- use of trafficked workers/bonded labour
- persistent failure to pay legal wages
- severe restriction of freedom of association or clear discrimination against union members.

Actions to address these issues must be immediate.

Major non-compliance: Major breaches of aspects of UK law, for example lack of contracts with labour users or employment contracts for workers or excessive working hours. Actions taken to address these issues should be urgent and time-bound.

Minor non-compliance: There is not absolute compliance with requirements of the code, but failings are not judged to be of immediate significance to safety or fundamental rights. For example, issues of data protection are not being followed completely or storage of workers' details is insecure. A time-frame for improvement would be agreed.

⁴ LP refers to labour provider and LU refers to labour user

4.2 Field trials of the assessment process

Field trials were carried out in the South Holland area of Lincolnshire between November 2003 and February 2004. Six different businesses, considered typical of those that employ the services of labour providers, were identified by retailers and volunteered to take part in the trials. Each of these nominated a labour provider with whom they had a current contract. The key areas of activity assessed were:

- preparing and packing flowers (2);
- preparing and packing fruit and vegetables (1);
- preparing and packaging ready-made foods (2);
- preparing and packing fruit (1).

The time of year did not permit us to experiment during field harvest activity or with protected (glasshouse) crops, but we fully anticipate that our techniques are adaptable to these circumstances.

With the co-operation of the enforcement agencies, standard background checks⁵ were completed on the labour providers. This information was helpful for us to assess the outcomes of the approach and its complementarity with the existing enforcement effort.

4.3 A worker complaints mechanism

We also aimed to test a mechanism that enabled workers to understand their rights and 'whistle-blow' if they believed these were not being respected. We considered that this was important because:

- temporary workers are less likely to be aware of their legal rights;
- temporary workers are more likely to be vulnerable and open to exploitation;
- ETI's experience suggests that codes of practice work best when accompanied by an effective, confidential means for workers to complain;
- an effective whistle-blowing mechanism is likely to be more cost effective than relying on assessment visits as the sole means of identifying worker exploitation.

We produced a short leaflet in ten languages⁶ advising workers of their rights and this is included in Appendix 3. Spalding Citizens Advice Bureau volunteered to staff a helpline and offer advice to any workers who made contact. Provision for interpretation services was also made. Labour users distributed this leaflet to workers prior to three of the six trial assessments and its availability was evaluated.

⁵ Checks were made as compliance indicators only: results were not released or attributable

⁶ English, Polish, Arabic, Farsi, Kurdish (Kirmanji and Sorani), Italian, Portuguese and Punjabi

4.4 Key findings of the trial assessment

4.4.1 Non-compliant practices identified

Our trials identified a number of critical, major and minor non-compliances with our code of practice. Table 4.2 below summarises these and gives examples of the sort of action that was recommended to the labour provider. An asterisk (*) indicates where action by the labour user was also required.

Table 4.2 Examples of non-compliances and corrective actions

Critical non-compliances	Examples of corrective action required by labour provider
<i>Employment is freely chosen.</i> Workers indebted to employer and report they cannot leave place of work before repayment.	Workers to be offered alternative work elsewhere with help and advice on repayment of debt.*
<i>Unsafe and overcrowded accommodation</i> provided by LP	Workers offered alternative accommodation.*
<i>Employment of young persons in unsafe work</i>	Immediate cessation of unsafe practices (eg driving fork-lift trucks). Conduct full health and safety risk assessment.*
<i>Worker transport vehicles in clear need of repair/maintenance</i>	Immediate action to ensure legal compliance and public safety.
<i>Illegal deductions from pay resulting in sub-minimum wages</i> (eg deductions for transport or 'administration' costs)	All unlawful practices to cease. Appropriate consents must be given by workers in advance of any legal deduction being made.
<i>No check of sub-contractors or their labour</i> within code of practice guidelines	Audit all sub-contractors used and ensure they comply with code of practice.
<i>Potentially serious health and safety practice</i> , for example (1) Failure to carry out worker induction training or provide suitable instructions/training for non-English speaking workers; (2) Drivers or workers operating vehicles or machinery or plant without valid licences or certificates	Ensure formal training procedures are introduced. Ensure that risk assessments are carried out. Ensure key health and safety messages are delivered in a format that is understood.*
<i>Copy of worker ID not kept as required</i>	Establishment and maintenance of worker records as advised in code of practice.
Major non-compliances found	Examples of corrective actions required by labour provider
<i>Lack of contract</i> between labour user and provider	Agree and sign contract that clearly attributes all necessary areas of employer responsibilities between labour provider and user.*
<i>Insufficient Employers' Liability Insurance</i> and related issues	Ensure all workers are covered by current insurance and clear notice of this is given on all sites worked and on transportation between sites.*

Table 4.2 Examples of non-compliances and corrective actions

Major non-compliances found	Examples of corrective actions required by labour provider
Excessive hours worked/ no time off Working Time Directive not complied with (no opt-out)	Comply with EU Working Time Directive.*
Overtime for agricultural work not paid at premium rate	All overtime to be paid at premium rates.
Discrimination (not all workers are asked for ID issues)	Ensure equality of treatment of all workers with respect to documentation controls.)
Temporary NI numbers (lack of control)	Ensure systems in place to ensure correct use of temporary NI numbers and encourage workers to obtain full NI numbers.
Lack of clarity on benefit entitlements (eg, sickness, holiday pay)	Full rights to be included in written terms and conditions or contract of employment.
No public service vehicle licences for drivers of worker vehicles (when workers charged for transport)	Obtain PSV licences (or stop charging workers for transport).
Stakeholder pensions not offered where appropriate.	To be offered as appropriate.
Minor non-compliances	Example of corrective action required by labour provider
No structure in place for consultation between workers and management	Employer to adopt open attitude to trade unions and allow access to trade union officials as workers require.
Key documents not available in language workers can understand , eg, disciplinary procedure	Translate all key documents.
Equal opportunities/discipline/grievances (lack of written policies)	Ensure policies in place and communicated to workers.
No relationship with enforcement agencies , local or national	Establish links with local enforcement officers.
Poor Data Protection practice (retaining workers' records without permission or insecure record keeping)	Keep all records secure and obtain appropriate consents from workers for all records kept.

Tables 4.3 below and 4.4 overleaf further illustrate the number of times that the critical and major non-compliances described above were found in the six assessments. The vertical axis refers to the code category to which the non-compliance relates (as described in Appendix 2). The horizontal axis counts all the non-compliances that were found under a given code clause and its sub-clauses.

Table 4.3 Critical non-compliances

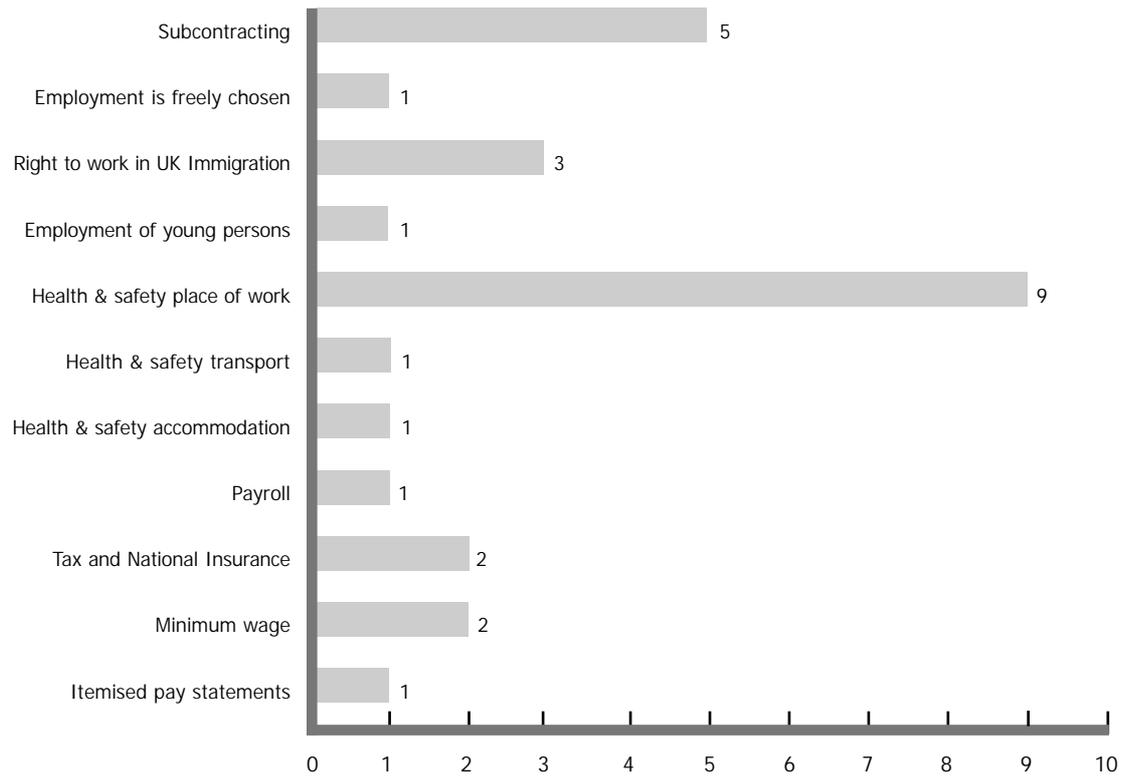
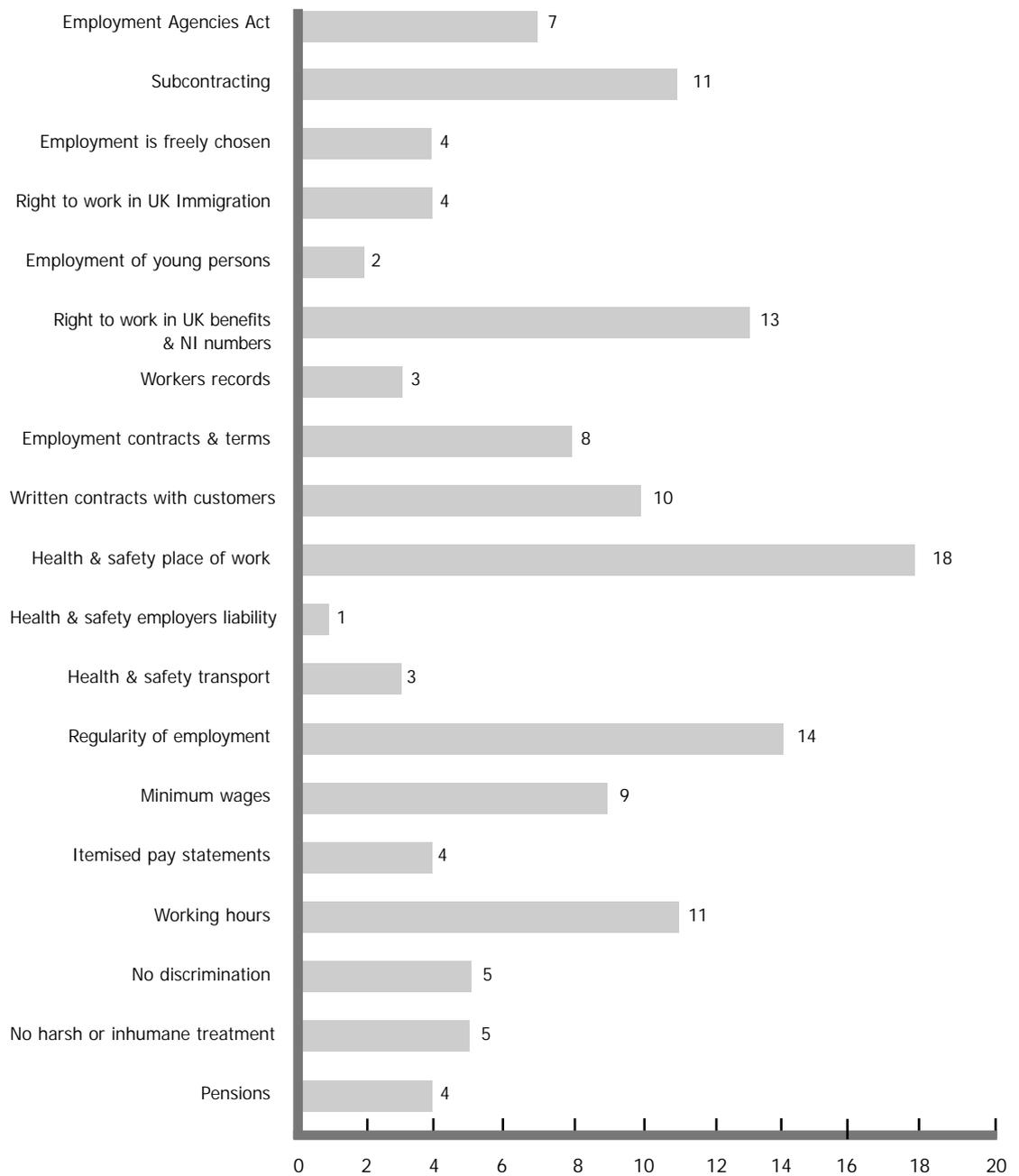


Table 4.4 Major non-compliances



Eleven critical non-compliances related to **health and safety** practices that, in the view of the auditors, could have resulted in serious accident or injury. Nine of these related to issues within the place of work, for example where no training was given by the labour provider or user. One related to vehicles used to transport workers, where an examination revealed defective tyres and the other related to overcrowded accommodation provided by a sub-contractor of a labour provider.

It appears to be common practice for temporary workers to receive no health and safety training, even when using potentially dangerous machinery. The problem is particularly acute for non-English speakers. Responsibility for health and safety often falls between the labour provider and the labour user whose site they work at. We note a similar confusion within the industry over Employers' Liability Insurance and in four of the six assessments we found evidence of insufficient insurance cover for workers.

In one case we found that **young people** were employed to carry out hazardous tasks such as the operation of a fork-lift truck.

Wherever labour providers were using **sub-contractors** to provide workers we were critical of the lack of effective controls to ensure that the code was being observed. We found five critical non-compliances against this area of the code. A two-day assessment of this nature cannot effectively assess all sub-contractors and each needs to be subject to this level of scrutiny in any credible scheme.

In two of the assessments we found that workers did not receive net **minimum wages** because they were charged illegally for items such as transport or 'administration'. We also found that workers did not receive adequate pay slips and explanation of such deductions.

In two of the six assessments workers reported excessive **working hours** and did not have the right to at least one day off a week. On five occasions, labour providers were found to have insufficient systems to monitor the hours worked and were not respecting the requirement for signed opt-outs. Non-payment of overtime premiums appears to be commonplace and we found this on three occasions.

In one disturbing case, workers reported that they did not feel **free to leave** their place of work until they had repaid debts that had been incurred prior to their arrival in the UK. The issue poses serious questions about the integrity of the labour provider concerned or of sub-contractors and agents involved in recruiting the workers in their country of origin. In a voluntary context, without adequate powers to investigate, this issue was very hard to deal with. While the situation of the workers we identified was dealt with immediately, other workers who are outside the immediate influence of the businesses we have engaged with may be subjected to this form of coercion which, though against our code, is not necessarily illegal.

We laid strong emphasis on the need for labour providers to have a **written contract** with all of their customers that clearly attributes all necessary areas of employer responsibilities between them and their customers. In most cases the labour provider had a contract with the users we visited but no labour providers had such an arrangement with all their customers.

In three instances we found that workers that did not have **National Insurance** numbers and were not encouraged by their employer to get them. Labour providers complained of the lack of government support when these requests are made. The issue is important because N I numbers grant access to benefits and services. In one case a worker complained his employer discouraged him from applying for an N I number and this meant he could not get access to dental care. In four cases we found that workers were unaware that they were entitled to sick pay or believed they were not entitled when they were.

Given the context of an announced assessment visit, where labour providers and users had volunteered for the exercise, we believe that the assessment technique detected a very significant number of critical, major and minor non-compliances. While the technique clearly requires further development to be broadly applicable, we believe that this approach has real potential to assess workplace conditions for temporary workers in the industry.

4.4.2 Assessment follow-up and corrective action

For any evaluation process to be effective, there has to be follow-up action, to ensure that the required improvements have been made. Each improvement or corrective action is time-bound and the urgency of that timeframe is guided by the severity of the non-compliance (critical, major and minor). A Corrective Action Plan is drawn up and agreed by all parties with responsibilities between labour user and provider clearly identified

4.4.3 Non-compliance and rates of pay to labour providers

Table 4.5 opposite compares the basic hourly rate per worker paid to each labour provider assessed and the incidence of non-compliances found. The average basic hourly rate per worker paid to the six labour providers was £6.00 with the highest being £7.29 and the lowest £5.45⁷. Defra has provided an initial estimate that all legal compliance costs can only be met if labour providers are paid a basic hourly rate of £5.85⁸ per worker, although labour providers have argued that this would not be sufficient in all circumstances. A minimum rate of around £6.00 appears to have emerged as a demarcation line in our own findings⁹. The three labour providers with the lowest number of critical non-compliances were each paid rates of more than £6.00 per worker hour and the three with the highest number were paid less. However, while it is certainly the case that labour providers must be paid at a rate that allows them to meet all legal requirements, our experience also suggests that genuine commitment by both labour provider and user to

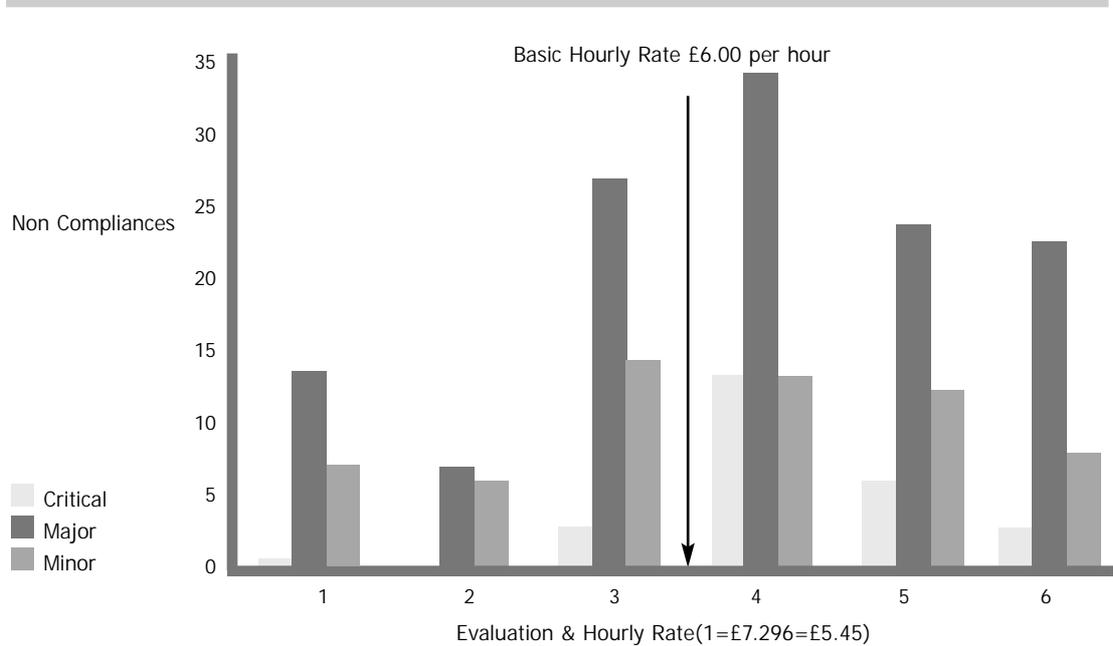
⁷ These rates do not include provision for overtime premiums or shifts where workers are awarded higher hourly rates.

⁸ Draft Regulatory Impact Assessment on the Gangmasters (Licensing) Bill

⁹ These rates of pay were applicable to workers who were on the National Minimum Wage (which was £4.50/hour) and would also be applicable to workers on the Manual Harvest Workers rate (also £4.50/hour) of the Agricultural Wages Board Order. Where the Standard Rate applies a higher hourly rate would need to be paid to the labour provider to accommodate that wage rate

respect the law is of equal importance. Labour provider 2 on the chart was paid an hourly rate of £6.27, £1 below the highest paid, and yet out-performed his competitor on every measure.

Table 4.5 Non-compliances by basic hourly rates



4.4.4 Relationship with the enforcement agencies

Our findings indicate that this system of assessment would only be effective as a means to support a licensing scheme if it worked in close co-operation with the enforcement agencies that are responsible for tax, VAT, benefit fraud, and illegal working. Enforcement agencies have the expertise on these matters and the statutory powers to investigate them. We believe that our assessment process complements the existing enforcement effort by introducing a technique specifically designed to detect issues of worker exploitation. Our approach lays emphasis on examination of labour issues, with open discussions with labour providers, users and workers in order to corroborate findings.

This point is further illustrated by table 4.6 overleaf which shows how the enforcement agencies would have risk-assessed the six labour providers using standard procedures and information available to them. It is important to point out that these assessments are indicators of risk and do not necessarily mean the labour providers are guilty of wrong-doing. However, each labour provider received at least one medium/high-risk rating and one received three high-risk ratings. An effective licensing scheme would require the enforcement agencies to share information and co-ordinate their scrutiny of labour providers. Our additional proposals for inspections focused on labour rights should inform rather than inhibit existing enforcement action.

Table 4.6 Labour provider risk indicators by enforcement agency

Labour provider	Dept of Work and Pensions Benefit fraud	UK Immigration Service Illegal working	Inland Revenue Tax fraud	Customs and Excise VAT fraud	National Asylum Support Service Asylum support fraud
1	High	Low	Low	Low	Medium
2	High	Low	Low	Low	High
3	Medium	Medium	Low	Low	High
4	Low	High	High	High	Low
5	Medium	Low	Low	Low	Medium
6	High	High	Low	Low	Low

4.4.5 Effectiveness of the worker complaints system

Our attempt to test the value of an awareness-raising leaflet and helpline for workers met with mixed results. On one assessment, six English-speaking workers revealed a number of very serious issues to the assessment team and reported that they had been encouraged to do so as a direct result of reading and discussing the leaflet. However, no calls were made to the CAB helpline as a result of our leaflets in all three assessments where the leaflet was used.

This experience suggested to us that the use of leafleting prior to assessment should be adopted as common practice. Workers must be made aware of their rights in their own language, and given a confidential means to complain with which they are very comfortable. However, some workers may not use this facility for months after they become aware of it. Leafleting via even the best employer and an impersonal helpline do not fully meet these requirements but are steps towards them. Trade unions and organisations that can advocate on behalf of workers can also have important roles to play. We believe that an effective complaints mechanism would make licensing more credible and reduce its cost. This should be explored within the structure discussed in chapter five of this report.

4.5 Limitations and areas for development

Although we have been encouraged by the results of the initial trials there are a number of areas of our thinking that require further development and exploration.

4.5.1 Different activities and locations

Trials could usefully be expanded to include issues that we could not cover but are included in the Gangmasters (Licensing) Act. For example, had we tested the technique in the harvesting of field crops we would have expected to detect other

problems, such as the application of the agricultural minimum wage to piecework. We tested the assessment process in the South Holland area and different geographical locations may also reveal different issues.

4.5.2 Language interpretation

A key component of this technique is the worker interviews and, as a single workforce can speak many different languages, we place a premium on accessing professional interpreters. In the context of a trial with limited resource we found this to be a constraint. The implementation of this technique will depend partly on building a register of reliable interpreters who can be available at short notice.

4.5.3 Consistency of assessments

Further work needs to be undertaken to ensure consistency of assessment in the application of this approach. For the purposes of the trials we worked with commercial audit companies known to ETI members. This exposed widely-differing approaches to and variable quality of services, including ability to report. Assessment of labour providers requires an in-depth knowledge of how the industry operates and our trials revealed the enormous benefit of co-operating with the enforcement agencies to share that expertise. Investment will be required to train the auditors who carry out assessments and supervise their standards. There may be merit in having dedicated auditors for the licensing scheme.

4.5.4 Sub-contracting

The presence of sub-contracted labour tends to dilute the efficiency of the assessment process unless it is fully mapped and time allocated proportionately to investigate each sub-contractor. While we would wish to discourage sub-contracting it is unrealistic to presume that labour providers can escape its necessity when sudden variations in demand for labour occur. Our experience reinforced the widely-held view that the biggest problems occur in sub-contracted parts of the supply chain. In such cases assessing the main supplier of labour (contract holder) will not reveal problems further down the chain. Each labour provider must be assessed in turn in such cases and, ultimately, each must be a licence holder. Only a tough line on this issue will deal with the problem.

4.5.5 Local government involvement

Some of the strongest powers of enforcement with respect to housing and environmental health rest with local government. During the course of our trials we learned that South Holland District Council had recently prosecuted a labour provider for sub-standard housing facilities. South Holland are taking a proactive stance on this issue and the Chief Executive advocates clear lines of communication with any new enforcement or licensing body on issues arising from audits that fall within his jurisdiction.

4.5.6 Sharing ethical audit data

During the course of our trials, we became aware that some labour users had undergone audits against the ETI Base Code at the request of retail customers. In so far as our assessment methodology examines the practices of the labour user, care needs to be taken to minimise any duplication of effort between these interventions. We note that retailers and suppliers in the food industry have launched a Supplier Ethical Data Exchange (SEDEX) and ETI acts in an advisory capacity to this initiative. This database enables suppliers to supermarkets to share their ethical audit data with nominated customers in order to cut duplication. If labour users in the chain granted access to this information to those charged with statutory licensing and registration, SEDEX may prove a cost-effective mechanism to share useful data such as the identity of labour providers that are currently contracted or sub-contracted.

4.6 Recommendations on assessment for compliance

- 1 The Gangmasters Licensing Authority should draw on the experience gained through the application of the assessment approach described above in developing audit tools to underpin the introduction of licensing.
- 2 Where an additional assessment is required by organisations in the supply chain this should complement and not duplicate any audit undertaken for licensing purposes.
- 3 Defra should lead on the development of confidential means for workers, trade unions and other organisations to report complaints about labour rights abuses in the sector.

5

The future challenge: making the Act work

The assessment findings, set out in the previous chapter, demonstrate that there is considerable room for improvement in labour conditions across the board in the industry and a pressing need to control unscrupulous or criminal labour providers. Since the trial assessments were conducted the Gangmasters (Licensing) Act has become law, a major step forward in efforts to regulate illegal labour providers. The Act provides for a statutory licensing and registration scheme, and introduces new offences with strict penalties and incentives to assist with law enforcement.

This Group believes that this legislation has the potential to be a real driver of change. A thorough, efficiently-enforced statutory licensing and registration scheme will bring benefits to the industry itself, retailers, consumers and, not least, to workers. Considerable challenges still lie ahead, however, in hammering out the detail and changing an industry culture to forge good practice from good intentions.

5.1 The Gangmasters (Licensing) Act

The Act, which became law in July 2004, provides for a statutory licensing scheme and an associated register of labour providers, to be administered by a new body, the Gangmasters Licensing Authority. Appendix 4 explains the main provisions of the Act. They enshrine an approach which will bring both statutory and supply chain pressures to bear on the problem, harnessing the internal drivers of change in the industry. The new Authority's licensing and registration mechanisms will help differentiate legitimate labour providers from those operating illegally. All businesses in the food chain will enjoy greater opportunity to compete fairly knowing that robust sanctions will apply to those operating outside the law. **In addition, both workers and wider society will benefit** as the measures introduce a clear business incentive to promote a culture of compliance with the law.

We expect that government and tax payers will also benefit through increased revenue from National Insurance, tax payments and a reduction in benefit fraud. We hope that some of this resource can be channelled into improved law enforcement in the sector.

In short, a vulnerable group of workers will be better protected; legitimate employers will be supported while disreputable ones will face prosecution; and consumers will have more certainty that the food products they buy have not depended on the exploitation of workers in the UK.

The passage of the Act has been followed by an ambitious timetable for establishing the Gangmasters Licensing Authority before it opens its doors in spring 2005. This includes consultation on and preparation of secondary legislation to set up the Authority. Discussions on a number of key areas lie ahead in the coming months including:

- the conditions attached to a licence;
- circumstances in which a licence may not be required and areas of work to be excluded from the licensing arrangements;
- the structure and operation of the Licensing Authority;
- the development of the appropriate audit process including issues such as the frequency of audits;
- the review of the audit results and measures to ensure the consistency and quality of auditing such as training, standards and quality control of auditors;
- the means for workers and industry stakeholders to 'whistle-blow' on suspected illegal practices;
- the action to be taken where a licence holder fails to comply with the terms of the licence;
- the compliance and enforcement protocols and associated risk assessment criteria;
- the measures to maximise efficiency such as sharing of information relating to compliance in the industry.

Clearly, there are still extensive discussions to be had between industry, government and labour representatives on how to ensure the primary legislation is translated into the best available mechanisms to combat the rising exploitation of workers in the industry. This work is now underway with consultation taking place with recognised stakeholders.

However, neither the passing of the Gangmasters (Licensing) Act, nor the conclusion of the consultation process can be the last word in the bid to rid the industry of the exploitation and the unsatisfactory employment practices which have become prevalent. This Group believes that the scale of the problems caused by use of illegitimate labour providers are such that further actions will be needed by key stakeholder groups. This poses a number of additional challenges.

- 5.2 The challenge to industry: to promote compliance with the law
Group members wholeheartedly acknowledge that, as industry stakeholders, they must promote compliance with the law in their commercial activities.
The reputation of the industry will suffer if rogue operators are allowed to thrive.

The industry depends on a constant supply of temporary labour so it is important to understand the likely impact of legislation on labour supply. Half the labour providers surveyed¹⁰ use sub-contractors to meet peaks in demand for workers. It is generally acknowledged that workers employed by sub-contractors tend to experience lower rates of pay and worse conditions.

The legislation strengthens the business case for both labour users and providers to take workers into their direct employment. We expect that it will result in a concentration in the labour provider industry, with more employment services being provided by fewer, more visible and more professional businesses. We expect that the introduction of the licensing scheme will reduce the number of sub-contractors that operate inefficiently or illegally as it becomes increasingly hard for them to function.

While we would expect this trend to reduce the exploitation of workers, it is possible that it could also reduce flexibility to respond to sudden changes in the demand for labour. Such pressures may drive up costs, at least in the short term, but it may be that improved management practices can mitigate the worst effects. For example, 85 per cent of labour providers surveyed believe they are given unreasonably short notice of the number of workers that they are required to supply (often being told at just 24 hours' notice).

5.3 Challenges to labour users

- All labour users covered by the Act must use only legitimate, registered labour providers.
- Retailers must specify that use of registered labour providers only is a condition of business and regularly check that their suppliers are honouring this agreement.
- Contractors must be required to check proof of legitimacy from all labour providers they contract.
- Retailers, suppliers and labour providers must work together to improve predictability of demand for labour – for example with regard to special promotions – in order reverse the negative effects that the 'just-in-time' delivery culture has on labour demand and working conditions.

¹⁰ Defra commissioned the University of Cambridge to survey labour providers who attended a consultative meeting on 9 October 2003; 20 businesses provided data.

5.4 Challenges to labour providers

- Labour providers must demonstrate their willingness to comply with the law by endorsing the code of practice.
- Labour providers must, through their trade associations, share best practice on compliance with the code of practice and the Act.
- Labour providers must provide proof of their legitimacy to all those individuals or organisations who contract their services.
- Labour providers must co-operate fully with compliance and enforcement officers carrying out their duties under the Act.

5.5 The challenge to government: resource enforcement of the law

Government is to be congratulated on its backing for a robust licensing Act which sent a clear signal to the industry that illegal practices will no longer be tolerated. So we now look to them to put in place the resources needed to sustain this legislation. Enforcement resources must be funded by government. The fees generated by the licence and audit systems will not generate sufficient funds to support the enforcement regime necessary to identify and eliminate bad practice. Government's challenges include:

- ensuring that adequate resources are provided to fund enforcement activity on an annual basis;
- supporting a robust model of compliance and enforcement. This means:
 - clarifying best practice on auditing;
 - ensuring joined-up enforcement activity up between the Gangmasters Licensing Authority, government departments and existing enforcement bodies such as the Inland Revenue;
 - providing the financial and human resources necessary to enable the new Authority to proactively investigate alleged or suspected breaches of the licence conditions;
 - ensuring the new Authority has access to intelligence/expertise gathered under Operation Gangmaster.

5.6 A challenge to all: defining the conditions of a licence

There is some debate about whether the code of practice developed by Group members can and should be used as the benchmark for the core of the licence conditions. While the match between UK law and international standards is close, reliance on UK law alone would leave workers without adequate protection. For example, there is no specific provision in UK law on aspects of forced labour such as holding of workers' travel documents or requiring them to lodge deposits. Yet these practices have been revealed within the industry,

workers clearly require protection against them and compliance auditors must be given guidance to look for them.

We therefore believe the licensing scheme should be underpinned by the provisions of the code that we have developed during the course of our trials.

5.7 The challenge to the Gangmasters Licensing Authority

Much will be expected of the Authority when it opens its doors in 2005. The law which establishes it has attracted widespread interest, from other industrial sectors in the UK as well as from overseas bodies who will watch with interest to see if there are lessons to be learned.

The central challenge to the new Authority will be to work within the spirit of the legislation which established it. This legislation was extraordinary in how it united communities and stakeholders behind **its twin objectives**: to drive illegal labour providers from agriculture and to end the exploitation of temporary workers in the industry. The success of the Authority will be measured against these objectives.

5.8 Next steps for the Temporary Labour Working Group

The Temporary Labour Working Group came together two years ago in order to improve labour practices and achieve better protection for temporary workers in the industry. The passing of the Act represents a considerable success for us and all those who have called for these new measures.

Group members now accept their responsibilities to assist Defra in establishing the Gangmasters Licensing Authority and play their part to help it to become an effective regulator. But our work does not stop there. We intend to take the following steps to help pave the way for the implementation of the Act:

- distribute the Code widely and encourage labour providers to implement it now;
- organise a programme of regional workshops for labour providers and labour users to inform them of the changes in the industry and what they must do;
- establish a means by which labour providers can place themselves on a (temporary) voluntary register and have their businesses assessed against the standards in the code of practice;
- train auditors in the use of the assessment technique and make these service providers known to the industry.

The unique experience gained in delivering this programme will be used to advise Defra and the Gangmasters Licensing Authority on issues such as the conditions of a licence and the audit provisions.

The code of practice is not a 'compliance mechanism' as such and our Group will not offer a certificate of approval. We will promote it as a way to help labour providers understand what practices they must adopt in order to prepare for the introduction of licensing. We hope to encourage as many labour providers as possible to adopt best practices between now and June 2005 (or when the Authority begins a comprehensive audit programme) in order to sustain the momentum for change within the fresh produce industry.

Temporary Labour Working Group terms of reference

At the initial meeting of the Working Group to address labour conditions for seasonal and foreign labour in the UK Food Industry on 23 September 2002, the following terms of reference were agreed to guide its future work.

- 1 To consider the case for a statutory licensing and registration scheme that will effectively regulate the labour practices of providers of temporary labour to farms and packhouses and first-tier food processing facilities in the UK.
- 2 To lobby for new legislation to support such a scheme.
- 3 To consider the viability of a new cross-industry voluntary initiative that will effectively regulate the labour practices of providers of temporary labour to farms and packhouses and first-tier food processing facilities in the UK.
- 4 To ensure that any scheme proposed by the group fully considers:
 - 4.1 the role and responsibilities of retailers, growers, packers and manufacturers of food as well as relevant statutory bodies;
 - 4.2 the necessary monitoring and verification of implementation;
 - 4.3 the impact upon the supply of agricultural labour to the agricultural and food service industries;
 - 4.4 existing best practice that can be learned from the UK and elsewhere;
 - 4.5 measures to ensure the effective implementation of any such considerations in 4.1–4.4.
- 5 To consider other measures such as improved access to information and best practices, that would improve the ability of government, retailers, growers, packers and other suppliers of food products to act responsibly in order to mitigate the problems associated with poor and illegal practices by gangmasters.
- 6 To communicate the Working Group's progress and findings to all relevant stakeholder organisations.

Code of practice for labour providers to agriculture and the fresh produce trade

Ministerial foreword

Labour providers play an essential part in the agricultural and food packaging/processing industries, but the nature of the business provides ample scope for abuse – both of workers and the law - exemplified by the tragedy at Morecambe Bay earlier this year.

Government has been working hard to address the abuses over the years. For example, “Operation Gangmaster” – led by the Department for Work and Pensions and involving a variety of Government enforcement bodies - has begun to have a considerable impact, particularly in respect of some of the largest unscrupulous gangmasters. Likewise, other enforcement bodies for relevant legislation – HM Customs and Excise, Inland Revenue, Health and Safety Executive – have increased their enforcement activity against certain labour providers to good effect.

However, for action to be really effective, the entire supply chain needs to be involved in stamping out illegal practices. The Ethical Trading Initiative has been successful in engaging the whole supply chain – from the providers of labour to farmers and packhouses through to the supermarkets – in the development of the Code of Practice for Labour Providers to the Agricultural and Fresh Produce Trade. This has had the very beneficial side effect of providing a broad coalition in support of the Gangmasters (Licensing) Act, a Private Member’s Bill sponsored by Jim Sheridan, which has helped secure it a smooth passage through Parliament.

The Code of Practice complements the legislation in two ways. It will help secure improvements in the two years or so before the legislation is fully implemented, and the experience with it will inform the policies and practices of the Gangmasters Licensing Authority, which is expected to be operational in April 2005. The Code is rigorous and lengthy, but also realistic. It is a model of co-operative working.

Experience suggests that drawing up a code of practice is easy – compared with the task of implementation. There are any number of codes of practice that look good on paper, but which are simply not implemented. That is why it has been so important to secure the commitment of the National Farmers Union, the Fresh

Produce Consortium, the Association of Labour Providers and the major supermarket groups to this code. The Association of Labour Providers is making compliance with the Code a condition of membership. The Fresh Produce Consortium and the National Farmers Union have urged their members to use only labour providers that comply with the code. To reinforce these commitments the supermarkets are actively encouraging all suppliers to use only labour providers who are working to comply with the code of practice. For its part the Government is committed to stepping up enforcement action against illegal gangmasters and will also be carefully watching to learn from the lessons of implementing this Code and preparing the ground for the work of the Gangmasters Licensing Authority.

I congratulate the Ethical Trading Initiative (and others such as Fusion Personnel who have played a key role for several years) for bringing together those who have been involved in the difficult task of drawing up this code, as well the TGWU, NFU, FPC and the industry leaders who have committed their organisations to ensuring its implementation.

A handwritten signature in black ink, appearing to read 'L Whitty', written in a cursive style.

Lord (Larry) Whitty
Parliamentary Under- Secretary at Defra

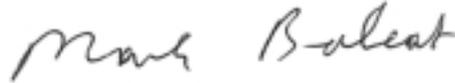
Opening statement

This Code of Practice has the full support of the fresh produce supply chain and key stakeholders are continuing to work together on a programme to fully implement the code.

The major organisations in the supply chain have made the following commitments

Association of Labour Providers:

Membership is conditional on compliance with the Code



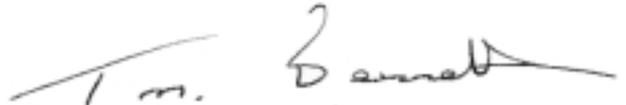
Mark Boleat, Chairman

Fresh Produce Consortium: Will urge its members to only use those labour providers that comply with the Code



Alan McCutcheon, President

National Farmers Union: Will urge its members to only use those labour providers that comply with the Code



Tim Bennett, President

Tesco, Sainsbury's, Marks & Spencer, Asda, Waitrose, Co-op, Somerfield and Morrisons: Will actively encourage all suppliers to use only labour providers who are working to comply with the code of practice.



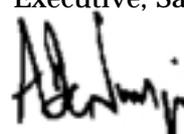
Sir Terry Leahy, Chief Executive, Tesco



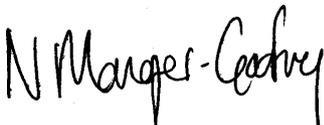
Justin King, Group Chief Executive, Sainsburys



Stuart Rose, Chief Executive, Marks & Spencer



Tony DeNunzio, Chief Executive, Asda



Nick Monger-Godfrey, Head of Corporate Social Responsibility, Waitrose



Chris Blundell, Corporate Affairs Director, Morrisons



Martin Beaumont, Chief Executive, the Co-operative Group



John von Spreckelsen, Chairman Somerfield plc

Introduction

This code is aimed at gangmasters or employment businesses that supply temporary labour to farmers, growers and packers (generally referred to as 'labour providers' within this code). Its aim is to set out clearly a standard of good practice for businesses providing labour to other businesses within the agriculture and fresh produce industry. In some cases this standard involves compliance with existing legislation, in others it sets out what is generally accepted as good practice within the industry.

This code can be seen as a forerunner to the compliance arrangements that will be introduced when statutory licensing of labour providers comes into effect, probably some time in 2006.

The code has been developed as a collaborative project working with a number of businesses and representative organisations in the fresh produce supply chain.

The presentation of the code indicates clearly the following:

L **required by law** (*shown in italics and annotated (L)*)

G **guidance towards compliance with the law or considered good practice** (shown in regular text and annotated (G)).

A separate section of appendices contains more detailed information on the relevant **legal requirements** as well as helpful toolkits and reference details. The appendices are not included in this report but can be accessed at www.lpcode.co.uk

In order for auditors to assess the extent of compliance with the code a number of **evaluation criteria** have been specified within each clause (shown in bold text). The end of each evaluation point indicates where the auditor may expect to find **evidence of compliance**, mainly from the four key areas of examination:

1. Labour user walk round
- 2.1. Labour user interview and document check
- 3.1. Worker interviews
- 4.1. Labour provider and document check

Evidence or lack of it from each of these areas will form the overall audit report, indicating the labour provider's level of compliance against this code.

The full code also points to other sources of detailed help and advice. Appendices to the code, given on www.lpcode.co.uk provide more detailed practical advice on how to achieve compliance.

The code has been designed to complement the NFU's *Casual and seasonal workers: code of practice for employment and the Fresh Produce Consortium's Temporary packhouse labour code of practice* which are aimed at labour users.

Some of the legal requirements to which the code refers vary according to the basis on which your workers are employed. In this code an employee refers to an individual who has entered into or works under a contract of employment. A worker refers to an individual who has entered into or works under either a contract of employment or a contract for services.

Although the focus of the code is on the agricultural and fresh produce industry, the general principles and requirements of the law it sets out will apply more widely to businesses supplying temporary labour in other sectors of the economy.

This code is not a full statement of the law and does not have the force of the law. It is for the Courts and Employment Tribunals to interpret the law in each individual case.

Glossary of terms

Worker: an individual who has entered into or works under a contract of employment or a contract for services.

Employee : an individual who has entered into or works under a contract of employment.

Customer: the person/business to which you are supplying labour.

Self-employed: an individual who should have a contract of some kind, but is responsible for paying their own income tax and National Insurance.

Sub-contractor: another labour provider that you may use to source labour from to fill a contract.

Labour user: the farmer/grower or food processing firm that contracts labour providers or gangmasters to supply temporary labour.

Labour provider/gangmaster: A provider of temporary labour to the agriculture and food processing industry.

The above definitions are for the purposes of this code; the meaning of these terms may vary in different forms of legislation.

Abbreviations used within this code of practice

ACAS:	Advisory, Conciliation and Arbitration Service
ACU:	Agricultural Compliance Unit
AMW:	Agricultural Minimum Wage
AWO :	Agricultural Wages Order
AWB:	Agricultural Wages Board
DVLA:	Driver and Vehicle Licensing Authority
DWP:	Department For Work and Pensions
ET:	Earnings Threshold
EU:	European Union
HMCE:	Her Majesty's Customs and Excise
HSE:	Health & Safety Executive
LEL:	Lower Earnings Limit
MOT:	Ministry of Transport
NASS:	National Asylum Support Service
NI:	National Insurance (number)
NICs:	National Insurance Contributions
NMW:	National Minimum Wage
OPRA:	Occupational Pension Regulatory Authority
PAYE:	Pay As You Earn
PSV:	Public service vehicle
REC:	Recruitment and Employment Confederation
SAWS:	Seasonal Agricultural Workers Scheme
SLA:	Service level agreement
TN:	Temporary (National Insurance) number
UK:	United Kingdom
VAT:	Value Added Tax
WRS:	Workers Registration Scheme

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The following appendices provide further information to support code compliance. They are not included in this report but may be found on www.lpcode.co.uk

Appendix 1	Legal requirements
Appendix 2	Labour providers' toolkit
Appendix 3	Health and safety toolkit
Appendix 4	Summary of useful references and contact details

Section 1: – Basic business requirements

1.1 General

- G** • (G) You should have established or be in the process of establishing a named business with the intent of providing labour to other businesses.
- (G) Ensure that you have read and understood all aspects of this code of practice and guidance before you commence business.
- (G) If you are unsure about any aspects of compliance with this code of practice, seek help and advice via the telephone numbers or websites overleaf (and in Appendix 4 to the code available at www.lpcode.co.uk).
- (G) Communicate with your customers and workers in order to maintain a good working relationship, and share any identified problems immediately.
- (G) Failure to comply with the law is an offence for which you may be prosecuted. This code of practice will help you to comply with the legal requirements applicable to labour providers.
- (G) Report any serious issues you become aware of, especially any abuse of workers, to the appropriate authorities. You can do this anonymously if you prefer.
- (G) Prior to any audit you should have supplied accurate and timely information at the request of the auditor.

Evaluation requirements

- **There is documentary evidence of a named business (Labour provider documentation).**
- **Labour providers indicate that they have read and understood this code of practice and consider themselves compliant or in the process of becoming compliant in all areas (Labour provider interview).**
- **Pre-audit information has been received and is sufficient to start the proposed audit.**

1.2 Income tax and National Insurance

- L** • *(L) As an employer you are responsible for both registering your business and yourself as an individual with the Inland Revenue and also for collecting income tax and National Insurance Contributions (NICs) for your workers. Income tax and NICs are deducted from workers' pay through the Pay as You Earn (PAYE) system.*
- *(L) Your business records must be kept for a period of at least six years from the end of an accounting period.*
- *(L) Your employer records must be kept for a minimum of three years from the end of a tax year.*

- *(L) Income tax and NICs deducted from workers, and any personal liability to income tax and NICs, must be paid over in accordance with Inland Revenue requirements.*

- G** • (G) It is good practice to know the address and telephone number of your local Inland Revenue office should you or your workers need help or advice on matters of income tax or NICs.

For more information contact the Inland Revenue's New Employers' helpline on **0845 60 70 143** or visit www.inlandrevenue.gov.uk/employers

Alternatively you may contact the business support teams at www.inlandrevenue.gov.uk/bst/index.htm

Evaluation requirements

- There is evidence that the labour provider is registered as an employer with the Inland Revenue and has a PAYE number (Labour provider documentation)
- There is evidence that income tax and NICs deducted from workers has been paid to the Inland Revenue.

1.3 Value Added Tax (VAT)

- L** • *(L) It is a requirement that you register for and charge VAT if your taxable turnover is over £58,000 (for the 2004/05 tax year). When you exceed this limit you must notify HMCE within 30 days from the end of the month this occurs otherwise you may incur a financial penalty.*

- *(L) VAT collected must be paid in accordance with HMCE requirements.*
- *(L) You should start keeping records and charging VAT to your customers from the date you are registered.*
- *(L) You should keep records of all your business supplies and purchases.*
- *(L) You should also keep a note of all the VAT you have charged and paid for each period covered by your VAT returns.*

- G** • (G) It is good practice to appoint a competent person to oversee your business accounts.

For more information on VAT contact the Customs and Excise National Advice Service on **0845 010 9000** or visit www.hmce.gov.uk/

Evaluation requirements

- **Records are readily available for inspection.**
- **There is documentary evidence of business taxable turnover (Labour provider documentation).**

- **If businesses exceed the VAT threshold, there is documentary evidence that they are registered with HMCE and charge and pay VAT (Labour provider documentation).**
- **If the VAT threshold is exceeded full VAT records are available (Labour provider documentation).**

1.4 Employment Agencies Act 1973 requirements

This code outlines generally accepted standards of good practice for businesses operating as labour providers.

- L** • *(L) If your business operates as an Employment Agency or Employment Business, as defined by Section 1 of the Employment Agencies Act 1973 (that is in all situations where the labour user has control of the workers supplied by you), then you will also have to apply the provisions set out in the Act and its associated Regulations to protect the labour users and the workers concerned.*
- G** • (G) It is good practice to clarify exactly what type of business you manage or run within any contract or service level agreement between yourself and your customers.

For more information on the Employment Agencies Act contact the Employment Agency Standards Inspectorate helpline on **0845 9555 105** or visit www.dti.gov.uk/er/agency

Evaluation requirements

- The labour provider has a clear understanding of their business in terms of the type of organisation they manage.
- There is documentary evidence of written contracts with all their customers.

1.5 Sub-contracting

- L** • *(L) A record of any sub-contractors used, workers' hours and relevant invoices should be kept for at least six years (Inland Revenue regulations).*
- G** • (G) If sub-contracting is a necessary part of the business you should ensure that any sub-contracted labour providers also adhere to all parts of this code of practice at all times.
- (G) Prior to the commencement of any contract with a sub-contractor you should ensure that you have had sight of relevant 'credentials', that is, those documents you would be expected to produce in accordance with this code of practice, and that you record this.
- (G) You should draw up a signed contract between yourself and any sub-contractors you use, obtaining assurance of their full compliance with this code of practice.

- (G) You should ensure that you are fully aware of any further sub-contracting, by any individual, within the sub-contractors you use.
- (G) You should notify your customer at the start of any contract that you are using or intend to use sub-contracted labour.
- (G) You should clearly identify which parts of your labour are sub-contracted, giving full names and details of the sub-contractor involved to your customer so that accurate information can be recorded on form ACU1 for forwarding to the Inland Revenue.
- (G) ACU2 or similar forms should be completed weekly for each labour supplier, from yourself as the main supplier and contract holder to each individual sub-contractor used during the period of the contract.
- (G) It is good practice to ensure you have regular contact with your sub-contractors during the period of each contract.
- (G) It is good practice to meet your sub-contractors at their own premises or home addresses prior to the start of any contract in order to verify that they are bona fide businesses.
- (G) It is good practice not to use any self-employed workers.

Evaluation requirements

- **There are details of all sub-contractors used, the number of hours they provided and records demonstrating any sub-contractors' compliance with this code of practice (Labour provider documentation).**
- **There is documentary evidence of a contract between the labour provider and all sub-contractors (Labour provider documentation).**
- **There is evidence that workers supplied by a sub-contractor are treated in accordance with this code of practice (Worker interviews).**
- **There is documentary evidence of the number of hours worked by all workers of all sub-contractors used by the labour provider.**
- **There is no evidence of an excessively large number of sub-contractors being used or that all labour supplied is sub-contracted (Labour provider documentation and worker interviews).**
- **There is evidence that where sub-contracted labour is used this fact has been declared fully to the labour user (Labour user documentation).**
- **There is evidence that self-employed workers are not used (Labour provider documentation and worker interviews).**

Section 2: Taking on workers

2.1 Employment is freely chosen

- L** • (L) *Workers are not required to lodge their identity papers with you.*
- (L) *Wages should be paid at regular intervals and not withheld until the end of a contract.*
- G** • (G) There should be no forced, bonded or involuntary labour, and under no circumstances should trafficking of workers occur.
- (G) Workers are not required to lodge deposits with you and are free to leave their employment with you after giving the required notice to quit.
- (G) Workers are not required to stay in accommodation provided by the labour provider, but are free to choose their own if they wish to do so.
- (G) Workers who live in accommodation provided by the labour provider and then leave the employ of that labour provider are not required to leave that accommodation immediately but are allowed to find a suitable alternative, within an agreed time limit.

Evaluation requirements

- **Workers confirm that they are not required to surrender identity papers such as passports and that they are free to leave after their notice has been served (Worker interviews).**
- **Workers confirm they are not made to stay in accommodation provided by the labour provider.**
- **Workers confirm that, where they live in accommodation provided by the labour provider, they are allowed to find suitable alternative accommodation (within an agreed time limit) on leaving the employ of the labour provider.**

2.2 Right to work in the UK – immigration issues

2.2.1 Preventing illegal working

- L** • (L) *Section 8 of the Asylum and Immigration Act 1996 requires that all employers in the UK make a basic document check on every person they intend to employ.*
- (L) *It is a criminal offence to employ someone aged 16 or over who has no right to work in the UK, or no right to do the work you are offering.*

From 1 May 2004 the Government introduced changes to the types of document, which you, as a UK employer, will need to check under Section 8 to avoid employing illegal workers.

Detailed guidance on what procedure you should follow is given in Appendix 1 (Legal requirements) but a summary of action you **must** take is as follows:

- (L) Ask any potential employee to provide evidence of identity and the right to work in accordance with the guidance relating to List 1*, for example, passport, identity card, application registration card (original documents only).
- (L) Ask any potential employee to provide evidence of identity and the right to work in accordance with the guidance relating to List 2*, for example, National Insurance card with birth certificate or work permit with a passport (original documents only).
- (L) Take reasonable steps to ensure that the documents presented to you are correct, for example, check photographs, names and dates of birth match the employee, check expiry dates etc.
- (L) Copy all relevant parts of the documents and retain only your copies

*Refer to full list 1 and 2 in Appendix 1 of this code of practice for documents required or visit www.lpcode.co.uk

- G** • (G) It is good practice to know the contact details (address and telephone number) of your local Immigration Officer and that you communicate with that person on a regular basis to ensure compliance.
- (G) It is good practice to keep an ongoing record of all contacts that you have with all enforcement agencies.

2.2.2 Workers Registration Scheme (WRS)

From 1 May 2004, the following 10 countries became part of the European Union, allowing their nationals to work in the UK.

- Czech Republic
- Estonia
- Hungary
- Cyprus
- Latvia
- Lithuania
- Slovenia
- Poland
- Slovakia
- Malta

- L** • (L) Any person who starts work for you from any of the above countries, **other than Cyprus and Malta**, will need to register with the Home Office, unless they are exempt from doing so. If you have been legally employing a national from one of these countries (that is before 1 May 2004) they will not be required to register.

Further details on how to proceed with this registration can be found in Appendix 1 of this code of practice but a summary of this is as follows:

- G** • (G) Carry out Section 8 checks according to the guidance above (refer to a more detailed guide in Appendix 1 * or visit **www.lpcode.co.uk**)
- (G) Advise your worker to register immediately, providing them with evidence of employment;
- (G) Take and retain a copy of their completed application form;
- (G) Retain the copy of their registration certificate, which will be sent to you by the Home Office.

Further advice on employing nationals from the new European Union countries can be obtained from **www.workingintheuk.gov.uk**

2.2.3 Discrimination

The prevention of illegal working can often raise race discrimination issues. It is important to remember that the population of the UK is ethnically diverse. In the UK most people from ethnic minorities are British citizens and most non-British citizens from ethnic minorities are entitled to work here.

There is no need to ask about an applicant's/worker's immigration status, apart from asking if he or she needs permission to work.

2.2.4 National Asylum Support Service (NASS)

Asylum seekers, on entering the UK and registering for asylum, are often supported during the asylum process by NASS benefit.

- L** • (L) *Asylum seekers receiving NASS benefit should not be employed.*
- G** • (G) If you suspect that any of your employees may be claiming NASS benefits fraudulently, you can report them by phoning the **NASS Fraud Investigation Hotline on 020 8633 0501.**

You can find out more information from the Home Office Employers' Helpline on **020 8649 7878**. The helpline operates from 6am – 9pm Monday to Friday and 9am-5pm on Saturdays and Sundays.

Evaluation requirements

- **There are copies of documents demonstrating workers' right to employment, as set out in regulations made under Section 8 of the Asylum and Immigration Act 1996, on all workers' files (Labour provider documentation).**
- **Adequate systems are in place to identify and not employ persons not entitled to work in the UK.**

2.3 Employment of children and young persons

You should ensure that children aged between 13 and minimum school leaving age and young workers (aged between minimum school leaving age and 18) are not working in prohibited activities or undertakings, that they do not work more than the hours permitted by statute, and that the work they do is in accordance with any local byelaws.

- L** • *(L) A risk assessment specifically concerning the health and safety of children and/or young persons must be carried out.*
- *(L) The education of children of school age must not be affected by working.*
- *(L) Children under 13 must not carry out work activities.*
- *(L) There are regulations and local byelaws that apply to the employment of children. These legal requirements specify hours of work, types of work, and age-based restrictions concerning hours and days on which children may work.*
- *(L) Some of the legislation applies nationally but labour providers employing children should also familiarise themselves with the law applicable in their own relevant geographical areas to ensure full compliance.*

Evaluation requirements

- **Dates of birth are recorded on all workers' files (Labour provider documentation).**
- **Details of any work activities carried out by children and young workers are held on file (Labour provider documentation).**
- **There are copies of adequate and suitable risk assessments available where young persons are employed.**
- **Children and/or young persons are carrying out work permitted by law (Labour user walk round).**
- **There is written evidence on file of local education authority consent for employment of workers between the ages of 13 and minimum school leaving age (Labour provider documentation). Permits may also be required.**
- **There is written evidence of parents' consent to employment for workers between the ages of 13 and minimum school leaving age (Labour provider documentation).**
- **There are accurate records of the times and days worked by children of school age (Labour provider documentation).**

2.4 Seasonal agricultural workers, foreign students and working holidaymakers

2.4.1 Seasonal Agricultural Workers Scheme and work permits

- L** • *(L) You must not employ any workers that are on the Seasonal Agricultural Workers Scheme (SAWS).*
- *(L) If a person requires a work permit to work in the UK, you as their employer must apply for such a permit. You must not take on a worker who has been issued a permit to work for an employer other than yourself.*
- *(L) If you are classed as an employment agency or employment business you cannot employ a person on a work permit.*

2.4.2 Foreign students attending courses within the UK

Students who fall into this category may work but must not:

- L** • *(L) Work for more than 20 hours per week during term time, unless their work placement is part of their studies and their education institution agrees.*
- *(L) Do business, be self-employed or provide services as a professional sports person or entertainer.*
- *(L) Work full time in a permanent job.*

2.4.3 Working holidaymakers

The working holidaymaker scheme allows certain people to come to the UK for an extended holiday for up to two years, with the intention of taking paid work here as a part of this working holiday.

In order to qualify workers must:

- L** • *Be a Commonwealth citizen, British Dependent Territories citizen or British Overseas citizen;*
- *Be aged 17 to 30 (inclusive);*
- *Want to come to the UK for an extended holiday, with the intention of taking paid work here as part of their holiday;*
- *Be single or married to a person who also qualifies for and plans to take a working holiday at the same time as themselves;*
- *Not have any dependent children who are aged five years or over, or who will be five before the holiday is completed;*
- *Be able to support and accommodate themselves without help from public funds;*
- *Be able to pay for their onward or return journey;*
- *Plan to leave the UK at the end of their holiday.*
- *Workers must get entry clearance as a working holidaymaker before they travel to the UK. A visa showing the entry clearance should be seen within the passport.*

Evaluation requirements

- **There should be no evidence of people on SAWS or with work permits working for the business (Worker interviews).**
- **There should be no evidence of student workers attending courses within the UK working in excess of 20 hours per week (Labour user and provider documentation).**
- **Workers on working holidays should have the correct visas and should only be from the approved categories (Labour provider documentation).**

2.5 Right to work – benefits and National Insurance numbers

L • *(L) If any of your employees claim certain DWP state benefits while working they may be committing an offence.*

- *(L) Any employer found to know that their worker is claiming benefit or assisting them to claim benefit will be committing an offence.*

G • (G) As an employer you should take appropriate steps to ensure that your workers are not fraudulently claiming state benefit while working for you.

You could help reduce benefit fraud by ensuring that workers provide a valid **National Insurance (NI) number**. There is no requirement for any worker to have an NI number **prior** to starting work, but you **do** need to take the appropriate identification steps for each individual worker you take on, as per Section 2.2.

- (G) Temporary NI numbers, made up of the letters TN, the worker's date of birth and the letter F or M to indicate the worker's gender, must only be used for short periods.
- (G) Workers with TN numbers should be encouraged, as soon as possible after starting work for you, to apply for a full National Insurance number. When convenient you should allow them time to go through the application process, provide any help and support as required, and ask them to provide you with a copy of the letter confirming that application.

There is no reason why a person legally entitled to work in the UK should not be able to get an NI number.

- (G) It is good practice to know who your local DWP contact is, and where to contact them if required. On occasions they may contact you about one of your employees. Full co-operation and a prompt response could prevent further action.
- (G) If you suspect someone is fraudulently claiming DWP state benefits, (for example, Jobseekers Allowance, Income Support, Incapacity or Sickness Benefit) you can report them by calling the National Benefit Fraud Hotline on **0800 854 440** between 7am and 11pm seven days a week.

Evaluation requirements

- **There are records to show that workers have a valid National Insurance number (Labour provider documentation).**
- **There is evidence that workers with temporary NI numbers have applied for a permanent number (Labour provider documentation).**

2.6 Workers' records

- **G** (G) It is **good practice** to keep a record of all your workers' details, including rates of pay, whether they have signed an opt-out agreement on working hours agreement to any deductions made from their pay other than those required legally and a record of any training they have received.
- (G) It is good practice to keep a photograph of the worker for identification purposes.

Evaluation requirements

- **Records on workers' files include their name, date of birth, address, NI number, copies of documentation showing their entitlement to work in the UK, and a photograph (Labour provider documentation).**
- **Accurate records are kept of days and hours worked for all workers.**

2.7 Data protection

Some of the details you hold on a worker may be sensitive and they may not wish you to share them with others.

- **L** (L) *You should ensure that you have a safe and secure way to store any workers' details (The Data Protection Act).*
- **G** (G) It is good practice to communicate to your workers why you require personal information about them.

For further information contact the Information Commissioner's office on **01625 545745** or visit **www.dataprotection.gov.uk/**

Evaluation requirements

- **There is evidence that information giving individual workers' details is stored securely (Labour provider premises)**
- **There is evidence that data protection issues have been communicated to and understood by workers.**

Section 3: Conditions of employment

3.1 Employment contracts, terms and conditions

- L** • (L) *You must ensure that all employees who are employed continuously for one month or more receive written statement/contracts giving specified employment details.*
- G** • (G) It is **good practice** to ensure that all workers are clear about what their employment terms and conditions are, including their job role, rate of pay and any deductions made.
- (G) It is **good practice** to ensure that where a worker's first language is not English they sign a declaration to show that they have understood their employment conditions (Employment Rights Act).

Evaluation requirements

- **There is evidence that all employees who have been employed continuously for one month or more have a written statement of employment particulars (Labour provider documentation and worker interviews).**
- **There is evidence that all workers have been provided with and understand written terms and conditions (Labour provider documentation and worker interviews).**

3.2 Written contracts or service level agreements for customers

- G** • (G) It is **good practice** to have a contract or written service level agreement (SLA) with your customers. Ideally, this should include terms and conditions such as payments, health and safety responsibilities, and disciplinary and grievance procedures.

Evaluation requirements

- **There is evidence of a written contract or service level agreement for each of the customers (Labour provider documentation).**

3.3 Recording workers supplied

- G** • (G) On a weekly basis it is good practice to supply each of your customers with an **accurate** completed ACU2* or similar form with full details of your workers. Your customer is required to forward these forms to the Inland Revenue's Taxes Information Distribution Office.
- (G) In any contract between the labour provider and the labour user, it is good practice to agree their requirements and format for providing details of the workers you supply.

Evaluation requirements

- **Copies of ACU2 or similar forms are available on file (Labour provider documentation).**
- **There is documentary evidence of accurate records being supplied on a regular basis, which include updated details following any changes within the workforce (Labour user and provider documentation check).**
- * **See the Labour providers toolkit, Appendix 2 of this code or visit www.lpcode.co.uk**

3.4 Health and safety issues

3.4.1 Place of work

L • *(L) You have a legal duty to ensure so far as is reasonably practicable the health, safety and welfare at work of your employees. You should also take steps to ensure the health and safety of those persons whom you do not employ, but who may come into contact with your undertaking.*

• *(L) You must ensure your workers are provided with sufficient sanitary conveniences, washing facilities and drinking water while they are at work.*

• *(L) Risk assessments are required to be carried out and the significant findings recorded. Other types of assessment may also be required. Workers require information, instruction and training to ensure their health and safety at work.*

Who provides this for your workers depends on what you have agreed with the labour user. It must be made clear, in the terms and conditions that you have with the labour user, who is taking responsibility for these matters.

G • (G) All information and training should be pitched appropriately, given the level of training, knowledge and experience of the worker. It should be provided in a form that takes account of any language difficulties or disabilities.

• (G) For workers with little or no understanding of English, or who cannot read English, special arrangements should be made. These could include providing translation, using interpreters, or replacing written notices with clearly understood symbols or diagrams.

• (G) You should co-operate with labour users and develop an induction training scheme. An example is shown in the health and safety toolkit (Appendix 3 to this code) or visit www.lpcode.co.uk

Further information is available by calling the Health & Safety Executive's Info line on **08701 545500** or by visiting the HSE website www.hse.gov.uk

Evaluation requirements

- **Health and safety risks to temporary workers are properly controlled (Labour user premises).**
- **There are suitable and sufficient sanitary conveniences, washing facilities and drinking water on customer premises (Labour users' premises).**
- **There are copies of risk assessments covering temporary workers on file (Labour provider / labour user documentation).**
- **Risk assessments (and where appropriate other types of assessment) are adequate and suitable.**
- **Responsibility for managing the health and safety of temporary workers has been clearly assigned and confirmed in writing (Labour provider / labour user documentation).**
- **Temporary workers confirm that they have received and understood the health and safety induction training for the site at which they are working (Worker interviews).**
- **There is adequate first aid provision at the place of work (Labour user premises).**

L 3.4.2 Employers' Liability Insurance

- *(L) It is a legal requirement that Employers' Liability Insurance covers your workers while they are carrying out work activities. This is to ensure that your workers are protected in the event of an accident at work and wish to claim some form of compensation.*

- **(G)** You should check with the labour user that valid Employers' Liability Insurance is in place that covers your workers on the labour user's premises, before allowing your workers to commence work on site.

The legal duty rests with the employer. Who is deemed to be the employer will depend on the actual circumstances of the work and the relationship between the parties involved. In typical packhouse situations the labour user's policy will cover the labour providers workers while they are under the control of the user on the user's premises but the existence of such a policy should be verified with the labour user. In other situations, for example where a labour provider controls harvest work on agricultural premises, the labour provider may have the legal duty to arrange the insurance.

- **(G)** Insurance may also be required for your office premises.

For more information contact the Health & Safety Executive on **08701 545500** or by visiting **www.hse.gov.uk/**

Evaluation requirements

- **There is evidence that an Employers' Liability Insurance policy exists for temporary workers at the labour user's site. This should include a current Employers' Liability insurance certificate (Labour provider and/or labour user documentation).**

3.4.3 Providing transport

- L** • *(L) Vehicles such as mini-buses used to transport workers to and from premises where they are working should be in a safe condition (roadworthy) and driven by qualified drivers only.*
- *(L) Drivers with foreign-issued licences are only able to drive on those licences for a year before having to obtain an UK licence.*
- *(L) When charging workers for transport to and from work the vehicle must be registered as a public service vehicle (PSV) and the driver must have a PSV licence.*
- *(L) A vehicle licence and, where appropriate, a current MOT certificate are required.*
- *(L) Appropriate insurance is required.*
- G** • *(G) It is essential to ensure that all drivers have a good understanding of the English language to enable them to understand signs and notices.*
- *(G) Vehicles should be properly maintained. See the Labour Provider toolkit on transportation of workers for guidance (Appendix 2) or visit www.lpcode.co.uk*
- *(G) If you make a charge for workers who use your transport you must also observe the law on deductions from pay (see Section 4.5 or 4.6 – see note under 4.5).*

Useful contacts for information about vehicle licensing and other matters include www.dvla.gov.uk and www.vosa.gov.uk for the government agency responsible for supervising the MOT scheme.

Evaluation requirements

- **Vehicles used for transporting workers appear to be in a safe and roadworthy condition with no obvious safety defects (Labour provider or labour user's premises).**
- **There is documentary evidence that all vehicles used for transporting workers are registered with the DVLA, have a valid vehicle licence (tax disc), MOT certificate, if required, and insurance (Labour provider documentation).**
- **There are records of all drivers including their names, driving licence number and type and, if a foreign licence, the date on which the holder entered the UK (Labour provider documentation).**

- **Where any deductions from wages for transport are made there is evidence on file of workers' written consent to such deductions (Labour provider documentation).**
- **There is documentary evidence that if charging for transport the vehicles are registered as public service vehicles (PSV) and that drivers have PSV licences (Labour provider documentation).**
- **Workers confirm that drivers have a sufficient understanding of English (Worker interviews).**

3.4.4 Providing accommodation

- L** • *(L) Accommodation, where provided by the labour provider, should not be overcrowded or create a risk to the health or safety of those persons using it.*
- *If workers are covered by the Agricultural Wages Board (AWB), and the labour provider offers accommodation, reference should be made to Section 11 of the Agricultural Wage Order (AWO), which details maximum charges.*
- *(L) You will need to observe the law on deductions from pay (See Section 4 Treatment of Workers, paragraph 4.5 Minimum wages).*
- G** • **(G) It is good practice, where workers obtain their own accommodation, to ensure that they are not being exploited, and to offer advice and help if requested.**

Evaluation requirements

- **Where workers are provided with accommodation, details of all such accommodation, including addresses and valid gas and electric certificates for each property, are available on file (Labour provider documentation).**
- **Workers confirm that any accommodation contains appropriate facilities and is safe for its inhabitants (Worker interviews).**
- **There is documentary evidence that any deductions for accommodation are within legal limits and of workers' written consent to such deductions (Labour provider documentation).**
- **There is no evidence that the room and space standards set out in the Housing Act 1985 are breached.**

Section 4: Treatment of workers

4.1 Trade unions

- L** • *(L) Employers should adopt an open attitude towards trade unions and should not unreasonably deny them access to their workforce. Worker representatives should not be discriminated against (Employment Relations Act).*

- (L) *Workers have the right to join or form trade unions of their own choosing and to participate in the activities of their union.*

- (G) Trade union representation can be valuable in reducing the possibility of abuses against workers.
- (G) It is **good practice** to have a structure in place for consultation between workers and management.

Further information on appropriate unions and how to contact them is available from the Trade Union Congress or Transport and General Workers' Union websites at www.worksmart.org.uk/unionfinder/index.php and www.tgwu.org.uk

Evaluation requirements

- **Workers confirm that no worker has been refused employment or been dismissed, suffered a detriment or been discriminated against for belonging to a union (Worker interviews).**
- **Workers confirm that they have not been threatened or otherwise induced not to join a union or talk to a trade union representative (Worker interviews).**
- **There is no evidence that trade unions have been unreasonably refused access to the workforce for the purposes of recruitment (Labour provider and worker interviews).**

4.2 Regularity of employment

To every extent possible, work performed must be on the basis of a recognised employment relationship. The nature of temporary labour provision makes it difficult for you to give any type of guarantee of regular employment.

- (G) You must therefore ensure that your workers are provided with a copy of and have understood their employment contract and/or terms and conditions.

Evaluation requirements

- **Workers confirm that they understand the basis on which they are employed (Worker interviews).**
- **When employment is offered, there is no evidence of discrimination against any worker.**

4.3 Payroll

An effective and up to date payroll system can help ensure that workers are paid the correct amount. It is also evidence that at least the National Minimum Wage (NMW), or the Agricultural Workers Order (AWO) minimum rates for standard workers, has been paid, that income tax and NICs have been paid, and can be used as a reference for workers who have pay disputes.

- (G) You can decide the format of your payroll. However you must ensure that the address from which your payroll is run and the name, address and telephone number of the competent person who looks after your payroll is provided.
- (G) It is good practice to pay your workers directly into their bank accounts.
- (G) Many new arrivals into the UK find it difficult to set up bank accounts, so it is also good practice to assist with this process by providing necessary information to the bank to enable the workers' accounts to be established.

Evaluation requirements

- **There is evidence that you have a payroll system in place whether in a paper or electronic form (Labour provider documentation).**

4.4 Income tax and National Insurance

- (L) *NICs must be paid in respect of all workers once earnings reach the Earnings Threshold (ET) during a week or any part of a week. The limit for the 2004/05 tax year is £91 per week. Additionally, you are required to include on your P35 details of all employees who earned between the Lower Earning Limit (LEL) of £79 and the ET of £91 even when no NICs have been paid.*
- (L) *There are special rules for workers who are continuing to pay contributions in their home country. You have to work out and deduct your workers' income tax and NICs from their wages (and benefits such as sick pay) and pay them to the Inland Revenue.*
- (L) *Records must be kept for a period of at least six years from the end of an accounting period.*
- (L) *Income tax and NICs deducted from workers, and any personal liability to income tax and NICs, must be paid over in accordance with Inland Revenue requirements.*
- (G) It is **good practice** to know the contact details for your local Inland Revenue office should you or your workers need help or advice in any matters of income tax or NICs.

For more information contact the Inland Revenue's New Employers' helpline on **0845 60 70 143** or visit **www.inlandrevenue.gov.uk/employers/**

Evaluation requirements

- **There is evidence that you have collected and paid income tax and NICs for workers who are required to make such payments (Labour provider documentation).**
- **There is evidence that workers have been provided with itemised accurate payslips for each pay period showing their income tax and NIC payments (Labour provider documentation and worker Interviews).**

4.5 Minimum wages

- L** • *(L) Depending on the type of work, workers are entitled to at least the Agricultural Wages Order (AWO) minimum rates for standard workers (currently £4.50 per hour for manual harvest workers and £5.15 per hour for other adult standard workers) or the National Minimum Wage (£4.50 per hour or £3.80 per hour for workers under 21 as at September 2004).*
- *(L) Under AWO, adult packhouse and field workers other than manual harvest workers have to be paid a minimum of £5.15 per hour. Non AWO workers should be paid at the minimum wage rate.*
- *(L) They must also receive any benefits (for example sick pay, holiday pay) that they are legally entitled to.*
- *(L) Deductions from wages as a disciplinary measure are not permitted nor are deductions, other than those required by law (for example tax, National Insurance), without the permission of the worker concerned (National Minimum Wage Act, Agricultural Wages Order, Statutory Sick Pay Act and Employment Rights Act).*
- *(L) Deductions from wages other than tax and National Insurance should be deducted with the consent of the worker after the net wage figure has been calculated and the reason for the deduction shown on the payslip.*

For more information on the Agricultural Minimum Wage contact the Agricultural Wages helpline on **0845 0000 134**. For more information about the National Minimum Wage contact the helpline on **0845 600 0678** or visit www.tiger.gov.uk/

For more information on state benefits contact the Inland Revenue Employers' Helpline on **08457 143 143** or the Agricultural Wages Helpline on **0845 0000 134** for agricultural workers.

Evaluation requirements

- **There is documentary evidence demonstrating that the legal minimum wage for the *type of work* has been paid, whether in the form of payroll records or copies of workers' time sheets and payslips (Labour provider documentation).**
- **There is evidence that all workers receive holiday pay and any of the other benefits they are entitled to. Records of any holiday pay, statutory sick pay, statutory paternity pay, statutory maternity pay and statutory adoption pay are kept on workers' files (Labour provider documentation).**
- **There is evidence that all workers have been provided with itemised payslips for each pay period showing that the correct payments have been made (Labour provider documentation and worker interviews).**

- **Any deductions other than those required legally are shown on the worker's file, together with evidence of the worker's written consent (Labour provider documentation).**

4.6 Itemised pay statements

- L** • *(L) You are required by employment law to provide all employees with an itemised pay statement for each pay period (Employment Rights Act).*
- G** • (G) It is good practice to provide all workers with itemised pay statements at or before the time at which wages are paid.

Evaluation requirements

- **There is evidence that all workers have been provided with itemised pay statements for each pay period (Labour provider documentation and worker interviews).**

4.7 Working hours

- L** *(L) Workers must not be required to work in excess of 48 hours per week unless they have signed an opt-out agreement, and should be provided with at least one day off for every seven-day period, or two days off in every 14-day period.*
- G** (G) Workers who wish to work over 48 hours must sign an opt-out agreement in a language that they can understand.
- (G) Workers' hours should be monitored to ensure that the requirements of the Working Time Regulations are met. This is necessary to ensure that workers are not exposed to health or safety risks arising from working excessive hours, and/or without the necessary breaks or periods of rest.

For information concerning working hours and associated issues such as entitlement to periods of rest see the ACAS website www.acas.org.uk

Evaluation requirements

- **Copies of weekly time sheets are available to show workers' hours (Labour provider / labour user documentation).**
- **There is documentary evidence that any workers working in excess of 48 hours per week have signed an opt-out (Labour provider documentation).**
- **Workers confirm that they work the stated hours and have received the breaks they are permitted by statute (Worker interviews).**

4.8 Discrimination

- L** • (L) *You should ensure that there is no discrimination in hiring, wages, hours of work, compensation, access to training, promotion, termination or retirement based on race, colour, ethnic or national origin, religion, age, marital status, sexual orientation, union membership or political affiliation (Race Relations Act, Sex Discrimination Act, Disability Discrimination Act, Sexual Orientation Act and Religion or Belief Act).*
- G** • (G) You should ensure that you have a suitable policy in place and that this is communicated and understood by your workers, if required by translating into their native languages.

You can get more information from the Equality Direct telephone advice service on **0845 6003444** or by visiting their website **www.equalitydirect.org.uk**

Evaluation requirement

- **Workers confirm that they have not been unlawfully discriminated against (Worker interviews).**

4.9 Harsh or inhumane treatment

- L** • (L) *There should be no physical abuse or discipline, threat of physical abuse, sexual or other harassment, verbal abuse or other forms of intimidatory action.*

When discipline is required you should ensure that you have a fair, lawful way of dealing with it.

- G** • (G) You will need to make sure that the rules and procedures are laid down clearly and that the different offences are classified. The rules should be made readily available to all workers, for example in a handbook, and should be communicated to them.
- (G) You must ensure that your customers provide you with details of their disciplinary procedures and that your workers are informed of them.
- (G) Every effort should be made to ensure that all workers (including those whose first language is not English) know and understand the rules.

You should ensure that you follow the ACAS Code of Practice in all disciplinary dismissal cases. This can be obtained by telephoning ACAS Publications on **08702 429090** or by visiting the website at **www.acas.org.uk**

Evaluation requirements

- **Workers confirm that they have been treated in a fair and lawful way (Worker interviews).**
- **There is documentary evidence of company disciplinary procedures, for example in a company handbook (Labour provider documentation).**
- **Workers (including those whose first language is not English) confirm that they understand the disciplinary procedures (Worker interviews).**

4.10 Pensions

- L** • *(L) As an employer with more than five employees, you are required to offer membership of a pension scheme to anyone, paid by PAYE, who has been on your payroll for more than three months.*

It does not matter if you take on individuals as workers or employees, but the fact that they have been paid by you for more than a three-month period means that you must offer a pension scheme.

Failure to offer any such scheme could result in action being taken against you.

- G** • (G) Workers have a right to save for their retirement. You should make a pension scheme available so workers can choose to join one if they wish. You are not required to contribute to a pension scheme. You cannot force a worker to join a pension scheme and you should not give workers advice about saving for their retirement.

Further information and guidance can be obtained from **www.rec.uk.com** (if you are a member of the REC) or **www.opra.gov.uk**

Evaluation requirements

- **There is evidence that workers have been given details about a pension scheme that they can join if they wish (Labour provider documentation and worker interviews).**

Need advice on your working conditions?

Call our free advice helpline

Did you know?

- You are entitled to be paid the minimum wage even if you do piece work. The hourly rates, before legal deductions, are:
 - £4.50 if you are aged 22 or over
 - £3.80 if you are aged 18–21.
- You may also be entitled to higher rates if you do agricultural work.
- Your employer should not deduct items other than tax and National Insurance from your wages, without your consent.
- Minimum Wage legislation restricts the amount you should pay your employer for accommodation to £24.50 per week, if you are paid the minimum wage.
- You should not be made to work over 48 regular hours without your prior written consent (and then only an additional 12 hours overtime per week).
- You are entitled to work and live in safe conditions.
- Your employer should not intimidate or threaten you.
- You should have written details of your job and contract of employment. You should be given a copy of this to keep. Your employer should not keep the original copies of any of your identification documents.
- You should be given a pay slip.

If you think your employer is not respecting your rights and you need to know more about any of the issues above then we will be able to give you free advice on your rights.

Work is currently being undertaken to ensure that workers within the fresh produce industry are protected and not exploited by their employers. To help in this work we are collecting information on the working conditions in the industry so we can understand if a free advice service for workers is helpful. Information you give will help us decide what services to provide. Although we can't deal with your problems ourselves, we can help you find out who can.

If you would like to speak to someone, who can give you advice about where you can go to get help, please contact the number below, mentioning reference 'ETI'. You do not need to give your name. Please call before 19 March 2004.

For free advice call
Lincolnshire Citizens Advice Bureau Line
08701 22 44 22
(National call rates apply)

Or, if you would like to speak to someone in your own language, visit one of the Citizens Advice Bureau offices listed below.

CAB offices

South Holland Citizens Advice Bureau:

Spalding office:

24 The Crescent, Spalding, PE11 1AF

**Open Monday, Tuesday, Wednesday: 10am–4pm and
Thursday and Friday: 10am–1pm**

Holbeach office:

Parish Council Offices, 11 West End, Holbeach

Open Mondays and Fridays: 10am–1pm

Long Sutton office:

Baptist Church Hall, West Street, Long Sutton

Open Mondays and Thursdays: 10am–1pm

Sutton Bridge office

Youth Centre, King Street, Sutton Bridge

Open alternate Thursdays: 10am–1pm

Lincolnshire Telephone Advice Line: 08701 22 44 22

Or you can e-mail (in English only): shcab@aol.com

Remember you can talk to CAB staff confidentially for advice on your concerns.

Appendix 4

The Gangmasters (Licensing) Act 2004

The Act will register and license labour providers in agriculture (as defined by the 1948 Act), consumable produce including meat, fish and shellfish, food processing and packaging. It provides for new criminal offences making it illegal:

- for labour providers in these industries to operate without a valid licence;
- for labour users to employ the services of unlicensed labour providers (subject to a due diligence defence);
- to obstruct enforcement officers exercising their duties under this legislation.

The Act is intended to create a 'paper trail' to make it easier to locate, then to prosecute, those labour providers who are operating illegally and/or exploiting those working for them. This should also reduce exchequer fraud and promote fair competition between labour providers. A register of licensed labour providers will provide labour users with an assurance that they are legitimate. Retailers will therefore be expected to insist that their suppliers and sub-contractors use only licensed operators and to ask their suppliers for evidence of this.

The Act also covers labour provider and user contractual arrangements in order to prevent abuse of the licensing regime through sub-contracting arrangements.

In summary

- The Act applies to the whole of the UK and covers agricultural and horticultural work, shellfish gathering and the processing or packaging of any products derived from these industries/sectors.
- The Act has the scope to extend this list to include gathering other wild creatures, wild plants and harvesting fish from fish farms, together with associated processing and packaging activities if appropriate.
- The Act defines a gangmaster as anyone employing, supplying and/or supervising a worker to do work in these areas. It applies to gangmasters operating in the sectors outlined, whether based in the UK or based offshore. It also covers all sub-contractors.
- In addition, any employment agencies/businesses (as defined by the Employment Agencies Act 1973) will come within the ambit of this Act if they are engaged in activities for which a licence is required under its provisions.
- The Act extends the full protection of the law to any individual worker undertaking work to which its provisions apply.

- It establishes the Gangmasters Licensing Authority. This body will be a Non-Departmental Public Body sponsored/funded by Defra and will consist of key industry stakeholders and representatives from government and enforcement agencies. It will set the conditions of the licence after consultation; process licence applications; set and collect licence fees; establish a public register of licensed gangmasters; have the power to modify, suspend or revoke licences; proactively enforce the licence conditions and have the potential to investigate and enforce the arrestable offences of operating without a licence/using a false licence.

Offences established by the Act

The offences established by the legislation will play an essential role in changing the culture by providing an effective deterrent for those who seek to operate outside the law.

The Act establishes the following offences:

- operating without a licence;
- obtaining or possessing a false licence or false documentation which is likely to cause another person to believe that a person acting as a gangmaster is licensed;
- using an unlicensed gangmaster (subject to a reasonable steps/due diligence defence);
- obstruction of enforcement officers/compliance officers exercising their functions under the Act.

The Proceeds of Crime Act 2002 has also been amended to enable the assets of convicted gangmasters to be seized.

The Police and Criminal Evidence Act 1984 has been amended to make operating without a licence and/or possession of a false licence/false documentation arrestable offences.

Enforcement officers will have the power of arrest for these offences. Offenders may be imprisoned for 12 months if convicted of operating without a licence or possessing a false licence/documents, while the deterrent value of the legislation has been strengthened by including sentences for repeat offences:

- up to two years imprisonment for a second offence;
- up to ten years imprisonment for a third offence.

Enforcement

The success of this legislation will depend on the quality of the enforcement regime it inspires. The legislation gives the Secretary of State the power to appoint enforcement officers to enforce the criminal offences of operating without a licence and possessing false documents.

In addition, the Licensing Authority is also able to appoint enforcement officers to carry out this function as well as compliance officers to enforce the licence conditions and take action for the purposes of the Act.

The Act gives enforcement and compliance officers rights to:

- enter premises
- search premises
- take possession of any item from premises
- require the production of relevant records
- inspect and take away records (including computers)
- order attendance of persons before them.

The Act opens up 'gateways' between departments, the Authority and other enforcement agencies to facilitate the exchange of enforcement information connected with the legislation.

The full Act may be seen online at

www.legislation.hmso.gov.uk/acts/acts2004/20040011.htm

It can be obtained in print from any good bookseller or direct from The Stationery Office, PO Box 29, St Crispins, Duke Street, Norwich NR3 1GN, **tel: 0870 600 5522**, **fax: 0870 600 5533**, e-mail: **book.orders@tso.co.uk** or online ordering: **www.tso.co.uk/bookshop**

A licence to operate

New measures to tackle exploitation of temporary workers in the UK agricultural industry

Temporary Labour Working Group, November 2004

This report is published on behalf of the Temporary Labour Working Group, an alliance of companies, trade associations and trade unions that has come together to tackle the problem of illegal activity by gangmasters in the agricultural industry.