

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

© Temporary Labour Working Group, November 2004

November 2004

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

2

## 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

Section number and title, *A licence to operate*

3

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.

Lord (Larry) Whitty

Parliamentary Under- Secretary at Defra

4

#### **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

5

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

**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  
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.

6

## 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:**

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

**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](http://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](http://www.lpcode.co.uk) provide more detailed practical advice on how to achieve compliance.

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

7

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

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.

8

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**

### **Contents**

#### **Section 1: Basic business requirements 10**

- 1.1 General 10
- 1.2 Income tax and National Insurance 10
- 1.3 Value Added Tax (VAT) 11
- 1.4 Employment Agencies Act 1973 requirements 12
- 1.5 Sub-contracting 12

#### **Section 2: Taking on workers 14**

- 2.1 Employment is freely chosen 14
- 2.2 Right to work in the UK – immigration issues 14
  - 2.2.1 Preventing illegal working 14
  - 2.2.2 Workers Registration Scheme (WRS) 15

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

9

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

- 2.2.3 Discrimination 16
- 2.2.4 National Asylum Support Service (NASS) 16
- 2.3 Employment of children and young persons 17
- 2.4 Seasonal agricultural workers, foreign students and working holiday makers 18
  - 2.4.1 Seasonal Agricultural Workers Scheme and work permits 18
  - 2.4.2 Foreign students attending courses within the UK 18
  - 2.4.3 Working holidaymakers 18
- 2.5 Right to Work - benefits and National Insurance numbers 19
- 2.6 Workers' records 20
- 2.7 Data protection 20

#### **Section 3: Conditions of employment 21**

- 3.1 Employment contracts, terms and conditions 21
- 3.2 Written contracts or service level agreements for customers 21
- 3.3 Recording workers supplied 21
- 3.4 Health and safety issues 22
  - 3.4.1 Place of work 22
  - 3.4.2 Employers' Liability Insurance 23
  - 3.4.3 Providing transport 24
  - 3.4.4 Providing accommodation 25

#### **Section 4: Treatment of workers 25**

- 4.1 Trade unions 25
- 4.2 Regularity of employment 26
- 4.3 Payroll 26
- 4.4 Income tax and National Insurance 27
- 4.5 Minimum wages 28
- 4.6 Itemised pay statements 29
- 4.7 Working hours 29
- 4.8 Discrimination 30
- 4.9 Harsh or inhumane treatment 30
- 4.10 Pensions 31

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](http://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

10

## **Section 1: – Basic business requirements**

### **1.1 General**

- (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](http://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) *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.*

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

11

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

- (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 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](http://www.inlandrevenue.gov.uk/employers)

Alternatively you may contact the business support teams at

**[www.inlandrevenue.gov.uk/bst/index.htm](http://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) *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) *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/](http://www.hmce.gov.uk/)**

#### Evaluation requirements

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

12

- **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) *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) *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](http://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) *A record of any sub-contractors used, workers' hours and relevant invoices should be kept for at least six years (Inland Revenue regulations).*
- (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 subcontractors you use, obtaining assurance of their full compliance with this code of practice.

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

13

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

- (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 subcontractor used during the period of the contract.
- (G) It is good practice to ensure you have regular contact with your subcontractors 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) *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) 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) *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) 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 • Latvia • Poland

- Estonia • Lithuania • Slovakia

- Hungary • Slovenia • Malta

- Cyprus

- (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.*

16

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) 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) *Asylum seekers receiving NASS benefit should not be employed.*

- (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.**

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

17

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

### **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) 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).**

18

## **2.4 Seasonal agricultural workers, foreign students and working holidaymakers**

### **2.4.1 Seasonal Agricultural Workers Scheme and work permits**

- (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) 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:

- 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.

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

19

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

#### **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) 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) 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.

20

#### **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) 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) *You should ensure that you have a safe and secure way to store any workers' details (The Data Protection Act).*
- (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/](http://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.**

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

21

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

### **Section 3: Conditions of employment**

#### **3.1 Employment contracts, terms and conditions**

- (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) 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) 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) 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](http://www.lpcode.co.uk)

**3.4 Health and safety issues****3.4.1 Place of work**

- (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) 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](http://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](http://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).**

#### **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/](http://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) *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) 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).**

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

25

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

- **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) *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) **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) 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).*

26

- *(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](http://www.worksmart.org.uk/unionfinder/index.php) and [www.tgwu.org.uk](http://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/](http://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) *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).**

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

29

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

- **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) *You are required by employment law to provide all employees with an itemised pay statement for each pay period (Employment Rights Act).*
- (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) *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) *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](http://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).**

30

#### **4.8 Discrimination**

• (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) 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](http://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) *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) 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](http://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) *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) 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](http://www.rec.uk.com) (if you are a member of the REC) or [www.opra.gov.uk](http://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).**

## Notes

## Notes

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

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.

©Temporary Labour Working Group, November 2004