

THE GANGMASTERS (APPEALS) REGULATIONS 2006

In the matter of an appeal against a decision made by the  
Gangmasters Licensing Authority (Ref 44/E/RV)

The Gurkha's UK Limited

(The Appellant)

V

The Gangmasters Licensing Authority

(The Respondent)

**Decision and Summary Statement of Reasons of the Appointed Person in relation to the above matter:**

**Decision**

Upon consideration of the appeal documents and accompanying letter lodged by the Appellant dated 21 April 2008 and the response to the appeal lodged by the Respondent it is the decision of the Appointed Person that the appeal of the Appellant be dismissed and the decision will take effect on the date of the promulgation of this decision.

**Summary Statement of Reasons**

1. This is an appeal against the decision of the Respondent dated the 4 April 2008 to revoke the Appellants license without immediate effect.

2. As a result of the expedited procedure set out in Regulation 20 Gamekeepers

- b. No workers had been paid holiday or sick pay (SSP). The labour provider had therefore admitted to withholding wages

and no evidence could be provided that the workers had received wage slips.

- d. The records of 18 workers had been inspected and 8 of those had worked more than 48 hours. There was no evidence that workers had signed an opt out agreements.
- e. The workers had not received health and safety training
- f. The labour contract only showed an entitlement to 20 days holiday whereas from the 1 October 2007 all workers were entitled to 24 days holiday per annum (for 5 days public holidays). The

8. The Appellant spoke on the telephone with the Respondent Secretariat on the 24 April 2008 about the appeal and the Appellant was made aware of the difference between a written determination and an oral hearing.

9. By a letter dated the 22 May 2009 the CIA Secretariat wrote to the Appellant

informing him that the Respondent was content for the matter to be dealt with without the need for a formal hearing. The Appellant was asked to respond within 10 days to indicate whether he was content with this suggestion. The

Having considered the evidence given by the Assessor and the Director,

it was not disputed that the records were not kept on site and that they were not available for inspection as required. It was noted that standard 2.2 requires that "**Deductions from workers' pay of income tax and National**

**Insurance are accurate, appropriate and fully HMRC.**"

produced for inspection by either the workers themselves or the Appellant. In the appellants ground for appeal they stated that **“a sample of the workers pay slips and detailed that the records were held electronically by our accounts service”**. It was noted that the Appellant could not state that pay slips had been produced and had been given to the workers, it was not

Respondent was wrong to conclude that no pay slips had been produced at

the inspection. The Appellant did not say why no payslips could be produced by themselves or their workers, therefore on the balance of probabilities the

When the situation had changed and what had happened...

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

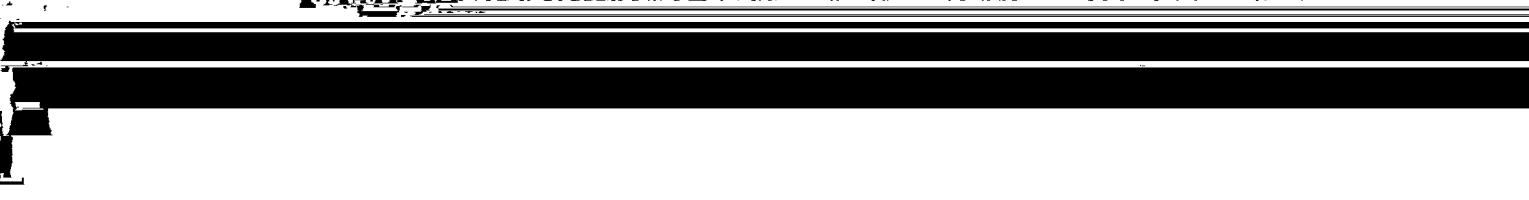
the Appellant was at the time of the inspection in breach of this standard.

Q. The community impact assessment carried out by the Respondent took in to


account the impact upon the community and the decision to revoke was taken without immediate effect but it was concluded by the Respondent that there should be no delay in the implementation of the decision to revoke if the



subject to regulation. In this case all of the breaches were in relation to



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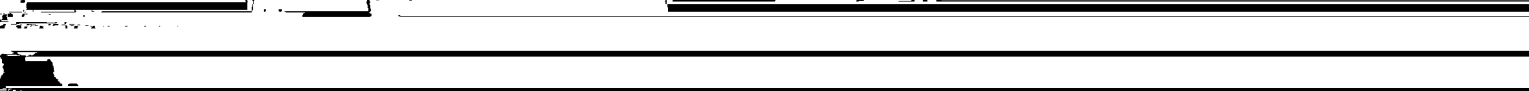
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workplace. The breaches were major and resulted in the workers being exposed to significant hardship and possible risk in the workplace due to health and safety failing (not only in respect of failing to provide training but also in respect of failing to give paid holiday and to secure the 48 hour opt out).

13. It is my decision that the appeal be dismissed and that the revocation take




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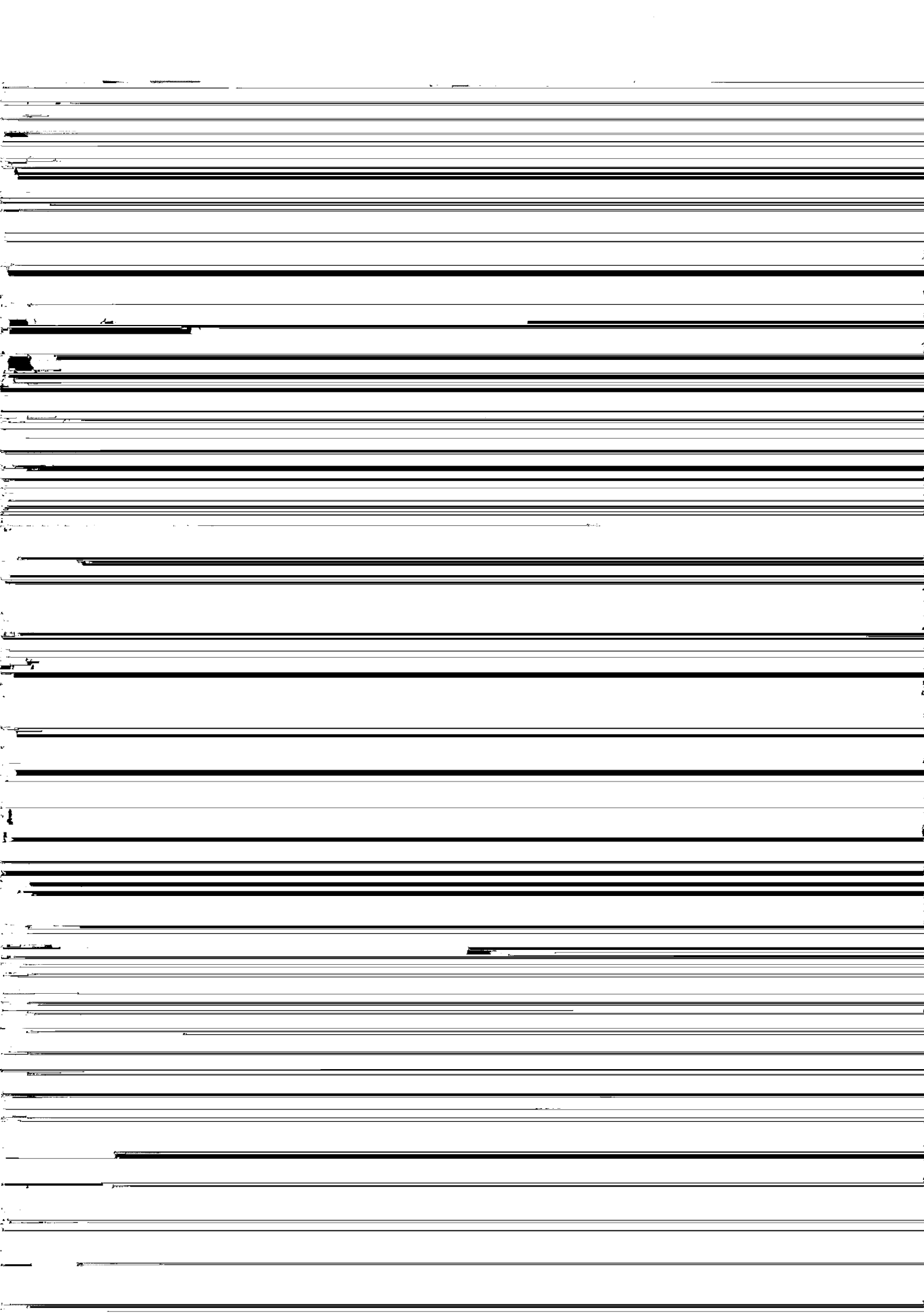
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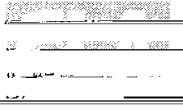
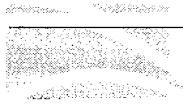
1. The contractor has not withheld or threatened to withhold payment to any worker on the


2. The contractor has not withheld or threatened to withhold payment to any worker on the

Licence Standard 2.7 (Major score 8 points)

The contractor has not withheld or threatened to withhold payment to any worker on the





 Licence Authority

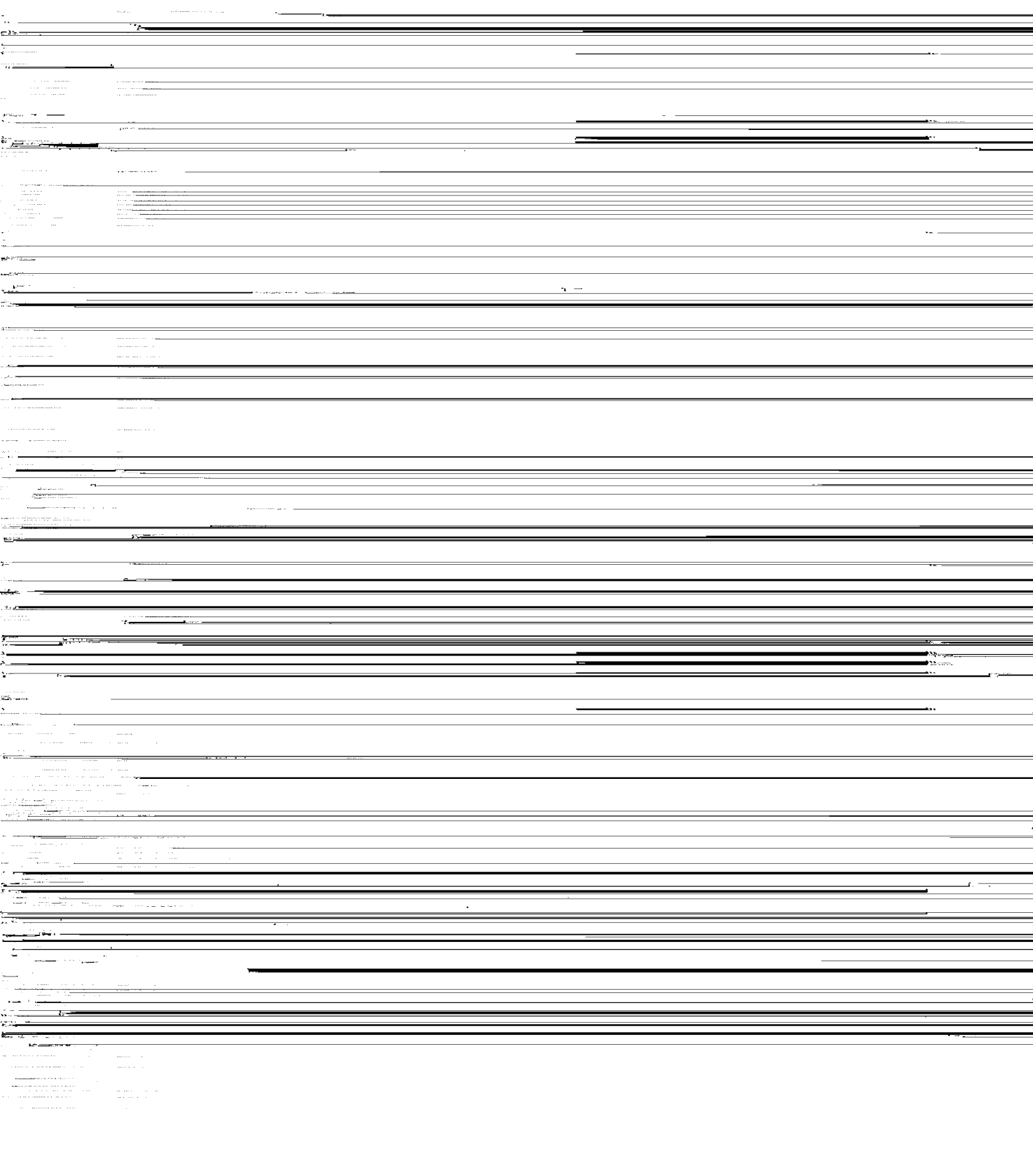
Licence Standard 6.2 (Major score 8 points)

The applicant has agreed with the labour user to ensure that responsibility for

- the provision of information to workers about any special qualifications or skills they require to do the work for which they have been employed has been agreed and assigned
- Any health and safety training, including induction training deemed necessary to carry out the work safely has been agreed and assigned and that
- the workers provided have received any necessary health and safety (including induction) training appropriate to the site(s) at which they are working and the work they have been employed to do. The information and training should be comprehensible

Details of non-compliance

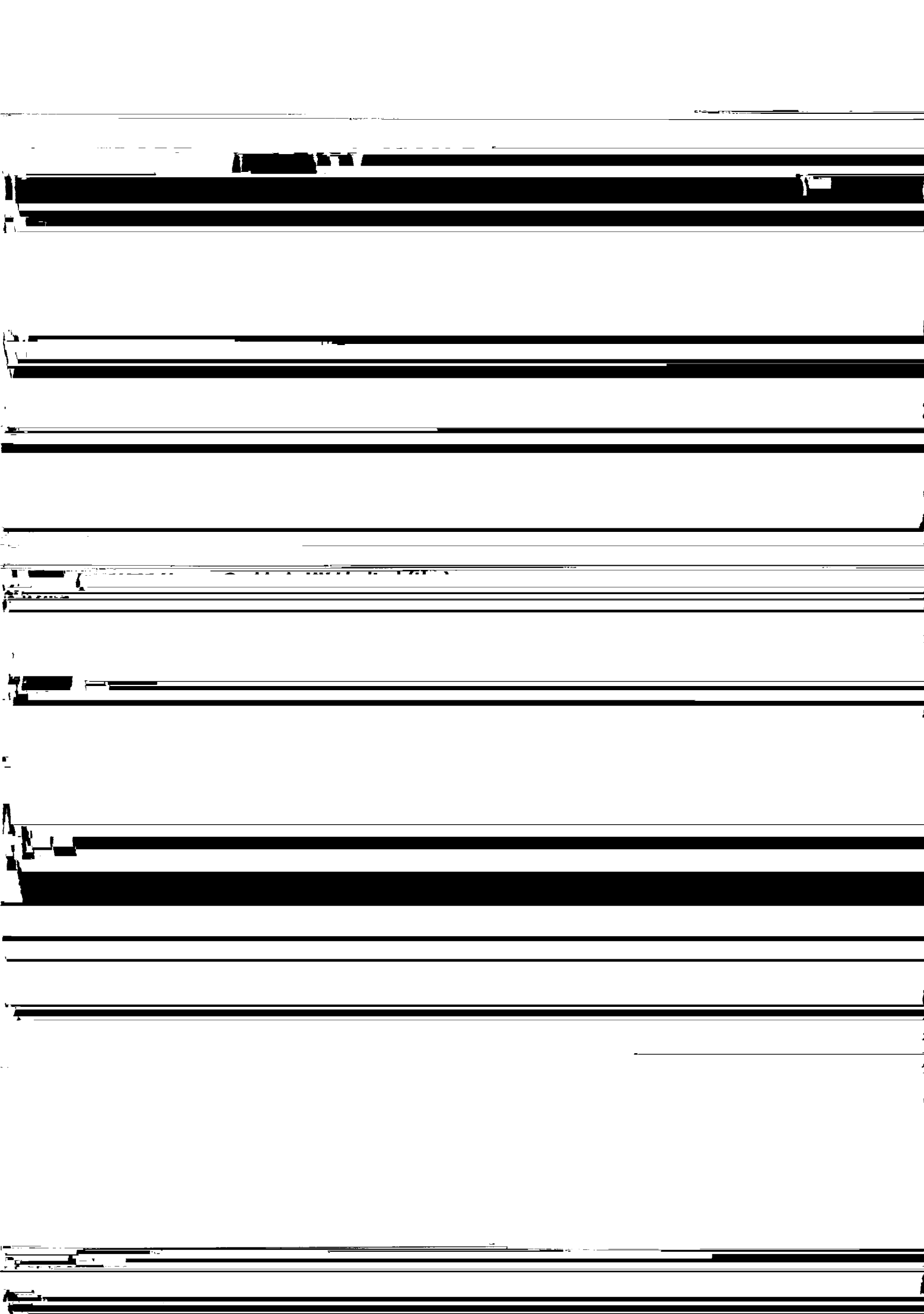
Workers at the labour user's site had not received health and safety training as required under



### Details of non-compliance

The labour provider admitted on inspection that records were not kept for all workers. For 11 out of 18 workers sampled no records could be found or were in the process of being assembled. Therefore, at the time of the Inspection the labour provider was in breach of this standard.

The revocation of your licence has been made without immediate effect. The licence holder



**5.2 Workers working in excess of 48 hours per week have freely signed an opt out agreement?**

The inspector examined the records of 18 workers supplied by the labour provider. From the records it could be seen that 8 of those workers had worked in excess of 48 hours. However, the inspector could find no evidence that the workers had signed a 48 hour opt out agreement.

**6.2 Is there evidence of the adequate provision of information, instruction training or supervision of workers?**

Workers at the labour provider's site had not received health and safety training as

### **5.3 Accurate records are kept of days and hours worked**

See 5.1 - one worker appeared to have work over 81 hours , this contradicts LUs comments on shifts/hours worked

The inspector has confirmed that he did see tracking sheets from which it

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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s40

COMPLIANCE INSPECTION BY



GURK0001 - GURKHA'S UK



2.4 Evidence that there an accurate payroll system is in place?

P F X

See 2.2

2.5 Evidence that deductions (e.g. for transport or accommodation) are made from wages with the worker's consent?

P F X

states no deductions made but transport deduction form seen in files






[REDACTED]

P F X



[  
sampled one weeks records w/c 30.11.07


PA stated did not have records for all workers

5.3 Accurate records are kept of days and hours worked 


P F X




[

6.6 Have adequate arrangements and provision been made in respect of personal protective clothing, welfare facilities and first aid? 

P F X


6.7 Drivers have valid licences 

P F X

6.8 Are suitable arrangements in place for the safe use and maintenance of workplace transport? 

P F X

na

6.9 Vehicles are registered with the DVLA 


P F X

All workers are GHURKAS/ethnic Nepalese

Partner of PA is ex WO Brit Army, recruits from ex service friends , spouses & dependants.

Concern as LU takes on LDs workers for permanent positions if suitable - this now


workers at LU are primarily Ghurka

7.2 The identity, qualifications and authorisations of the workers supplied have been confirmed 

P F X




sampled one weeks records w/c 30.11.07  
No records at all /files or being assesbled - for 11 out of 18 workers.  
PA stated did not have records for all workers

7.3 Workers employed for 1 month or more receive a written statement of employment particulars? 


P F X



8.2 Names and details of sub-contractor(s) are recorded 


P F X

na

8.3 There is documentary evidence of the agreement between the Labour Provider and all subcontractors 

P F X

na


8.4 The Labour Provider has the worker's permission before transferring them to another Labour Provider 

P F X




na

Section 8 Optional Comments



9.4 Children only carrying out work permitted by law 

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P F X  
  

I  
na

Section 9 Optional Comments