

## SCHEDULE

### Licence Conditions

## PART 2

### Conditions

#### **Obligation to act in a fit and proper manner**

4.—(1) The licence holder, principal authority and any person named or otherwise specified in the licence must at all times act in a fit and proper manner.

(2) If the licence holder or any person named or otherwise specified in the licence is a body corporate, an unincorporated association or partnership—

- (a) every director, manager, secretary or other similar officer of the body corporate,
- (b) every officer of the association or any member of its governing body, and
- (c) every partner,

including any person purporting to act in any such capacity, must at all times act in a fit and proper manner.

#### **Obligation to provide information**

5.—(1) The licence holder must notify the Authority within 20 working days of commencing an activity authorised by the licence.

(2) The licence holder must notify the Authority within 20 working days if there are significant changes to the details submitted with the holder's application, including any changes to the persons named or the positions otherwise specified in the licence.

(3) The licence holder must notify the Authority as soon as reasonably practicable if the holder knows or suspects the holder's licence has been used by someone not authorised to act on behalf of that holder.

(4) The licence holder must, on request, provide details of the holder's licence to any constable, enforcement officer or compliance officer.

#### **Inspection of the business**

6. A licence holder must permit the Authority to inspect the business at any reasonable time.

#### **Prohibition on charging fees**

7. A licence holder must not charge a fee to a worker for any work-finding services.

#### **Restriction on pre-conditions**

8.—(1) A licence holder must not make the provision of work-finding services conditional upon the worker—

- (a) using other services or hiring or purchasing goods provided by the licence holder or any person with whom the licence holder is connected; or
- (b) giving or not withdrawing consent to the disclosure of information relating to the worker.

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(2) Where a worker uses services for which these Rules do not prohibit the charging of a fee, a licence holder providing or making provision for such services must ensure that the worker is able to cancel or withdraw from those services at any time without incurring any detriment or penalty, subject to the worker giving to the provider of those services notice of five working days or, for services relating to the provision of living accommodation, notice of ten working days.

### **Restriction on detrimental action relating to workers working elsewhere**

**9.—(1)** A licence holder must not subject or threaten to subject a worker to any detriment on the ground that the worker has—

- (a) terminated or given notice to terminate any contract between the worker and the licence holder; or
- (b) taken up or proposes to take up employment with any other person.

(2) A licence holder must not require the worker to notify the licence holder, or any person with whom the holder is connected, of the identity of any future employer.

(3) However, in sub-paragraph (1), “detriment” does not include—

- (a) the loss of any benefits to which the worker might have become entitled had the worker not terminated the contract;
- (b) the recovery of losses incurred by the licence holder as a result of the failure of the worker to perform agreed work; or
- (c) a requirement in a contract with the licence holder for the worker to give a reasonable period of notice to terminate the contract.

### **Restriction on providing workers in industrial disputes**

**10.—(1)** A licence holder must not introduce or supply a worker to a labour user to perform the duties normally performed—

- (a) by a worker who is taking part in a strike or other industrial action (“the first worker”), or
- (b) by any other worker employed by the labour user and who is assigned by the labour user to perform the duties normally performed by the first worker.

(2) However, sub-paragraph (1) does not apply if—

- (a) the licence holder does not know, and had no reasonable grounds for knowing, that the first worker is taking part in a strike or other industrial action, or
- (b) in relation to the first worker, the strike or other industrial action is an unofficial strike or other unofficial industrial action for the purposes of section 237 of the Trade Union and Labour Relations (Consolidation) Act 1992(1).

### **Restriction on paying workers’ remuneration**

**11.—(1)** A licence holder must not in respect of a worker whom the holder has introduced or supplied to a labour user who has then employed the worker—

- (a) pay or make arrangements to pay to the worker the worker’s remuneration arising from the employment with the labour user, or
- (b) introduce or refer the labour user to any person with whom the licence holder is connected with a view to that person paying, or making arrangements to pay the remuneration to the worker.

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(1) 1992 c. 52.

(2) However, sub-paragraph (1) does not apply where the labour user and the licence holder are connected.

### **Restriction on charges to labour users**

**12.**—(1) Any term of a contract between a licence holder and a labour user which is contingent on a worker taking up employment with the labour user or working for the labour user pursuant to being supplied by another licence holder is unenforceable by the licence holder in relation to that worker, unless the contract provides that instead of a transfer fee the labour user may by notice to the licence holder elect for a hire period of such length as is specified in the contract during which the worker will be supplied to the labour user—

- (a) in a case where there has been no supply, on the terms specified in the contract; or
- (b) in any other case, on terms no less favourable to the labour user than those which applied immediately before the licence holder received the notice.

(2) In sub-paragraph (1), “transfer fee” means any payment in connection with the worker taking up employment with the labour user or in connection with the worker working for the labour user pursuant to being supplied by another licence holder.

(3) Any term as mentioned in sub-paragraph (1) is unenforceable where the licence holder does not supply the worker to the labour user, in accordance with the contract, for the duration of the hire period referred to in sub-paragraph (1) unless the licence holder is in no way at fault.

(4) Any term of a contract between a licence holder and a labour user which is contingent on a worker—

- (a) taking up employment with the labour user or any other person to whom the labour user has introduced the worker, or
- (b) working for the labour user pursuant to being supplied by another licence holder,

is unenforceable by the licence holder in relation to the event concerned where the worker takes up such employment or begins working pursuant to being supplied by another licence holder (as the case may be) after the end of the relevant period.

(5) In sub-paragraph (4), “the relevant period” means the period of—

- (a) eight weeks starting on the day after the day on which the worker last worked for the labour user pursuant to being supplied by the licence holder, or
- (b) 14 weeks starting on the first day on which the worker worked for the labour user pursuant to the supply of that worker to that labour user by the licence holder,

whichever period ends later.

(6) In determining the “first day” for the purposes of sub-paragraph (5)(b), no account is taken of any supply that occurred prior to a period of more than 42 days during which that worker did not work for that labour user pursuant to being supplied by that licence holder.

(7) A licence holder must not—

- (a) seek to enforce against the labour user, or otherwise seek to give effect to, any term of a contract which is unenforceable by virtue of sub-paragraph (1), (3) or (4); or
- (b) otherwise directly or indirectly request a payment to which by virtue of this paragraph the licence holder is not entitled.

### **Prohibition on withholding payment to workers**

**13.** A licence holder must not withhold or threaten to withhold the whole or any part of any payment due to the worker in respect of any work done on any of the following grounds—

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- (a) non-receipt of payment from the labour user;
- (b) the worker's failure to prove that the worker has worked during a particular period of time (but this does not prevent the licence holder from satisfying itself by other means that the worker worked for the particular period in question);
- (c) the worker not having worked during any period other than that to which the payment relates; or
- (d) any matter within the control of the licence holder.

#### **Notification of charges and terms of offers**

**14.**—(1) Subject to sub-paragraph (2), on the first occasion that a licence holder offers to provide or arrange the provision of a service to a worker, the holder must give notice to the worker stating—

- (a) whether that service is a work-finding service for which these Rules prohibit the licence holder from charging a fee; and
- (b) whether any other services or goods which may be provided by the licence holder or any other person are services or goods for which the holder or other person providing them will or may charge a fee, together with details of any such fee including—
  - (i) the amount or method of calculation of the fee;
  - (ii) the identity of the person to whom the fee is or will be payable;
  - (iii) a description of the services or goods to which the fee relates and a statement of the worker's right to cancel or withdraw from the service and the notice period required; and
  - (iv) the circumstances in which refunds or rebates are payable to the worker, the scale of such refunds or rebates, and if no refunds or rebates are payable, a statement to that effect.

(2) Sub-paragraph (1) only applies where one or more services or goods referred to in sub-paragraph (1)(b) for which the worker will or may be charged a fee may be provided to the worker.

(3) A licence holder must give a further notice to a worker stating the matters referred to in sub-paragraph (1)(b) where, subsequent to the first occasion that it offers to provide or arrange the provision of a service to the worker, the licence holder or the person providing to the worker any services or goods referred to in sub-paragraph 1(b), introduces or varies any fees in relation to any services or goods referred to in sub-paragraph 1(b).

(4) Where a licence holder offers any gift or makes an offer of any benefit to a worker, in order to induce the worker to engage the licence holder to provide the worker with services, the holder must notify the worker of the terms on which the gift or benefit is offered before the offer is open for acceptance by the worker.

#### **Requirement to agree terms with workers**

**15.**—(1) Before supplying a worker to a labour user, a licence holder must agree the terms which will apply between the licence holder and the worker.

(2) The terms must include—

- (a) the type of work the licence holder will find or seek to find for the worker;
- (b) whether the worker is or will be supplied by the licence holder under a contract of service or a contract for services, and in either case, the terms and conditions which will apply;
- (c) an undertaking that the licence holder will pay the worker in respect of work done by the worker, whether or not the licence holder is paid by the labour user in respect of that work;

- (d) the length of notice of termination which the worker is obliged to give the licence holder, and entitled to receive from the holder, in respect any particular assignment;
  - (e) the rate of remuneration payable, or the minimum rate the licence holder reasonably expects to achieve for the worker;
  - (f) details of the intervals at which remuneration will be paid; and
  - (g) details of any entitlement to annual holidays and to payment in respect of such holidays.
- (3) A licence holder must record all the terms, where possible in one document, and give the worker the written terms before the holder provides any services to the worker.
- (4) Those terms may only be varied by written agreement, a copy of which must be provided to the worker as soon as possible and in any event no later than the end of the fifth working day following the day the variation was agreed.
- (5) However, sub-paragraph (3) does not apply if the worker has been given a written statement of particulars of employment in accordance with Part I of the Employment Rights Act 1996.
- (6) A licence holder must not make the continued provision of any services by it to a worker conditional on the agreement by the worker to any variation.

#### **Requirement to agree terms with labour users**

**16.**—(1) Before first providing services (other than providing information in the form of a publication) to a labour user, a licence holder must agree the terms which will apply between the licence holder and labour user.

- (2) The terms must include—
- (a) details of any fee which may be payable by the labour user to the licence holder including—
    - (i) the amount or method of calculation of such fee; and
    - (ii) the circumstances in which refunds or rebates are payable, and their scale, or, if no refunds or rebates are payable, a statement to that effect; and
  - (b) details of the procedure to be followed if a worker introduced or supplied to the labour user proves unsatisfactory.
- (3) The licence holder must record the terms in a single document and send a copy to the labour user as soon as reasonably practicable.
- (4) If any variation to those terms is agreed, the licence holder must provide the labour user with a document containing details and the date of the variation as soon as reasonably practicable.

#### **Information to be obtained from a labour user**

**17.** A licence holder must not supply a worker to a labour user unless the holder has obtained the following information—

- (a) the identity of the labour user and, if applicable, the nature of the labour user's business;
- (b) the date on which the labour user requires a worker to commence work and the duration, or likely duration, of the work;
- (c) the position which the labour user seeks to fill, including the type of work a worker in that position would be required to do, the location at which and the hours during which the worker would be required to work;
- (d) any risks to health or safety known to the licence holder or labour user and the steps the licence holder or labour user has taken to prevent or control such risks;

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- (e) the experience, training, qualifications and any authorisation which the licence holder or labour user considers are necessary, or which are required by law or by any professional body, for a worker to possess in order to work in the position; and
- (f) any expenses payable by or to the worker.

#### **Confirmation to be obtained about a worker**

**18.** A licence holder must not supply a worker to a labour user unless the holder has obtained confirmation—

- (a) of the identity of the worker;
- (b) that the worker has the experience, training, qualifications and any authorisation which the licence holder or labour user considers are necessary, or which are required by law or by any professional body, to work in the position which the labour user seeks to fill; and
- (c) that the worker is willing to work in the position which the labour user seeks to fill.

#### **Steps to be taken for the protection of the worker and the labour user**

**19.**—(1) Before any work is commenced, a licence holder must have—

- (a) taken all reasonably practicable steps to ensure that the worker and the labour user are each aware of any requirements imposed by law, or by any professional body, which must be satisfied; and
- (b) made all reasonably practicable enquiries to ensure that it would not be detrimental to the interests of the worker or the labour user for the worker to work in the position which the labour user seeks to fill.

(2) Sub-paragraph (1)(a) is without prejudice to any of the licence holder’s duties under any enactment or rule of law in relation to health and safety at work.

(3) Where a licence holder receives or obtains information which—

- (a) gives the holder reasonable grounds to believe that a worker is unsuitable for the position with a labour user for which the worker is being supplied, or
- (b) does not give such reasonable grounds but otherwise indicates that the worker may be unsuitable for that position,

the holder must without delay inform the labour user and any intermediaries of that information.

(4) If sub-paragraph (3)(a) applies, the licence holder must also end the supply of that worker to the labour user.

(5) If sub-paragraph (3)(b) applies, the licence holder must also make such further enquiries as are reasonably practicable as to the suitability of the worker for the position concerned.

(6) The licence holder must inform the labour user and any intermediaries about those enquiries and any further information obtained.

(7) Where information resulting from those enquiries gives the licence holder reasonable grounds to believe that the worker is unsuitable for the position concerned, the holder must without delay inform the labour user and any intermediaries of that information and end the supply of that worker to the labour user.

(8) In this paragraph “without delay” means on the same day, or where not reasonably practicable, the next working day.

(9) Nothing in this paragraph authorises the making of a disclosure in contravention of the Data Protection Act 1998(2).

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(2) 1998 c. 29.

### **Provision of information to workers and labour users**

**20.**—(1) A licence holder must ensure that at the same time as the holder supplies or proposes to supply a particular worker to a labour user, the holder—

- (a) gives to the labour user the information about the worker obtained in accordance with paragraph 18; and
- (b) informs the worker whether the worker will be supplied under a contract of service or a contract for services;

(2) A licence holder must ensure that at the same time as it offers a worker a position with a labour user—

- (a) the holder gives to the worker (orally or otherwise) all information it has been provided with under paragraph 17; and
- (b) if a rate of remuneration has not been agreed with the labour user, the holder informs the worker (orally or otherwise) of the rate of remuneration it will pay the worker to work in that position.

(3) Where any of the information referred to in sub-paragraph (1) was given orally, the licence holder must afterwards provide it in writing as soon as possible and in any event within three working days.

(4) Sub-paragraph (1) does not apply where—

- (a) the worker has performed the same type of work with the labour user during the previous five working days, and
- (b) the information required is the same as the information which the worker and labour user have already received,

unless the worker or labour user request otherwise.

(5) Subject to sub-paragraphs (4) and (6), where a licence holder intends to introduce or supply a worker to a labour user for an assignment of five consecutive working days' duration or less—

- (a) sub-paragraph (1)(a) may be satisfied by the holder giving to the labour user (orally or otherwise) the name of the worker to be supplied and a written confirmation by the holder that the holder has complied with paragraph 18; and
- (b) sub-paragraph (1)(b) may be satisfied, where the holder has previously provided the worker with the information referred to under that sub-paragraph and that information remains unchanged, by the employment business giving to the worker in writing the information referred to in paragraph 17(a) and (b).

(6) Where, after it has started, an assignment to which sub-paragraph (5) applies is extended beyond a duration of five working days, the information referred to in sub-paragraph (1) which has not already been provided must be provided in writing by the end of the eighth working day of the assignment, or by the end of the assignment if sooner.

### **Situations where workers are provided with travel or required to live away from home**

**21.**—(1) A licence holder must not arrange for a worker to take up a position other than as a labour user's employee if, in order to take up that position, the worker has to occupy accommodation other than the worker's home, unless the conditions in sub-paragraph (2) are satisfied.

(2) The conditions are that the licence holder has taken all reasonably practicable steps to ensure that—

- (a) suitable accommodation will be available for the worker and details have been provided to the worker, including the terms on which it is offered and any cost; and
- (b) suitable arrangements have been made for the worker to travel to such accommodation.

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(3) Where a worker is—

- (a) to be supplied to a labour user other than as the labour user's employee, or is under the age of 18; and
- (b) the licence holder, labour user or any intermediary has arranged free travel or payment of fares for the worker's journey to the place of work,

the licence holder must, if the work does not start or upon it ending, either arrange free travel for the worker's return journey, pay the worker's return fare or obtain an undertaking from the labour user or any intermediary to arrange free travel or pay the return fare.

(4) The licence holder must give notice to the worker setting out the details of the free travel or payment of fares including any conditions on which the same are offered.

(5) If a labour user or intermediary does not comply with an undertaking given under subparagraph (3), the licence holder must either arrange free travel for the return journey of the worker or pay the worker's fare.

(6) A licence holder must not arrange for a worker who is under the age of 18 to take up a position which will require the worker to live away from home unless the parent or guardian of the worker has consented in writing.

(7) If a worker is loaned money by the licence holder, the labour user or any intermediary to meet travel or other expenses in order to take up a position—

- (a) the worker must be provided with details in writing of the amount loaned and repayment terms; and
- (b) the worker must not be asked to repay a greater sum than the amount loaned.

### **Records relating to workers**

**22.** Every licence holder must record, as soon as reasonably practicable, the following details in relation to every application received from a worker—

- (a) the date terms are agreed between the licence holder and the worker;
- (b) the worker's name, address and, if under 22, date of birth;
- (c) any terms which apply or will apply between the licence holder and the worker, and any document recording any variation;
- (d) any relevant details of the worker's training, experience or qualifications and any authorisation to undertake particular work (and copies of any documentary evidence of the same obtained by the licence holder);
- (e) details of any requirements specified by the worker in relation to taking up employment;
- (f) the names of labour users or sub-contractors to whom the worker is supplied;
- (g) details of any resulting engagement and the date from which it takes effect;
- (h) the date the contract was terminated (where applicable); and
- (i) details of any enquiries made under paragraphs 18 and 19 about the worker and the position concerned, with copies of all relevant documents and dates they were received or sent.

### **Records relating to labour user**

**23.** Every licence holder must record, as soon as reasonably practicable, the following details relating to labour users—

- (a) the date terms are agreed between the licence holder and the labour user;
- (b) the labour user's name and address, and location of the place of work if different;



- (c) details of any sub-contractors;
- (d) details of the position the labour user seeks to fill;
- (e) the duration or likely duration of the work;
- (f) any experience, training, ability, qualifications, or authorisation required by the licence holder or labour user by law, or by any professional body; and any other conditions attaching to the position the labour user seeks to fill;
- (g) the terms offered in respect of the position the labour user seeks to fill;
- (h) a copy of the terms between the licence holder and the labour user, and any document recording any variation;
- (i) the names of workers supplied;
- (j) details of enquiries under paragraphs 17 and 19 about the labour user and the position the labour user seeks to fill, with copies of all relevant documents and dates of their receipt;
- (k) the details of each resulting engagement and date from which it takes effect; and
- (l) dates of requests by the licence holder for fees or other payment from the labour user and of receipt of such fees or other payments, and copies of statements or invoices.

#### **Records relating to dealings with other licence holders**

**24.**—(1) Every licence holder must record, as soon as reasonably practicable, the names of any other licence holders whose services the licence holder uses, and details of enquiries made to ascertain that the other licence holder is licensed.

(2) A licence holder who has assigned or sub-contracted any of its obligations under any contract or arrangement with a worker or labour user to another licence holder must ensure that the terms upon which those obligations are assigned or sub-contracted are recorded, where possible in a single document.

#### **General provisions relating to records**

**25.**—(1) A licence holder must keep all records for at least one year from creation or, where they have been supplied by another person, from last supply.

(2) If the records are kept other than at premises a licence holder uses for or in connection with the carrying on of its business, the licence holder must ensure that they are readily accessible and capable of being delivered to the licence holder's premises in the United Kingdom or to the Authority within two working days.

#### **Conditions which apply to gathering shellfish**

**26.**—(1) This paragraph applies to licences granted in relation to shellfish gathering.

(2) The licence holder must ensure that there is a competent supervisor for each individual group of workers.

(3) The supervisor must be named on the licence.

(4) The supervisor must—

- (a) accompany the workers at all times to the work area;
- (b) be familiar with the use of any equipment or procedures used when gathering shellfish or accessing the work area; and
- (c) be able to communicate directly with every one of the group of workers.

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(5) The licence holder or the supervisor must notify the Maritime and Coastguard Agency Rescue and Coordination Centre of—

- (a) the licence holder's licence number;
- (b) contact details for the licence holder or supervisor;
- (c) the number of workers in the group;
- (d) the location of the work area; and
- (e) the times the group is going out and returning from the work area.

(6) In this paragraph, the “work area” means the place where the shellfish are gathered.

(7) If a fisheries permit or licence is required to gather shellfish the licence holder must ensure that workers comply with the provisions of that permit or licence.