

*Draft Regulations laid before Parliament under section 12(5) of the
Employment Agencies Act 1973, for approval by resolution of each House of
Parliament.*

DRAFT STATUTORY INSTRUMENTS

2002 No.

EMPLOYMENT AGENCIES, ETC.

**The Conduct of Employment Agencies and Employment Businesses
Regulations 2002**

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Whereas a draft of the following Regulations was laid before Parliament in accordance with section 12(5) of the Employment Agencies Act 1973(a) and approved by a resolution of each House of Parliament;

Now, therefore, the Secretary of State, in exercise of the powers conferred on her by sections 5(1), 6(1) and 12(3) of the Employment Agencies Act 1973 and having consulted such bodies as appear to her to be representative of the interests concerned, hereby makes the following Regulations:—

PART I

GENERAL AND INTERPRETATION

Citation and commencement

1. These Regulations may be cited as the Conduct of Employment Agencies and Employment Businesses Regulations 2002, and shall come into force on [*commencement date*].

Interpretation

2. In these Regulations, unless the context otherwise requires -

“the Act” means the Employment Agencies Act 1973;

“advertisement” includes every form of advertising by whatever means;

“agency” means an employment agency as defined in section 13(1) and (2) of the Act and includes a person carrying on an agency, and in the case of a person who carries on both an agency and an employment business means such a person in his capacity in carrying on the agency;

“au pair” means a person who is received or is to be received into a private household under an arrangement whereby that person is to assist in the domestic work of the household in consideration for receiving hospitality and pocket money or hospitality only;

(a) 1973 c.35.

“business day” means a day other than a Saturday or a Sunday, Christmas Day or Good Friday, or a day which is a bank holiday under or by virtue of the Banking and Financial Dealings Act 1971 in that part of Great Britain;

“company” includes any body corporate (whether incorporated in Great Britain or elsewhere) and references to directors and other officers of a company and to voting power at any general meeting of a company have effect in the case of a company incorporated outside Great Britain with any necessary modifications;

“employment business” means an employment business as defined in section 13(1) and (3) of the Act and includes a person carrying on an employment business, and in the case of a person who carries on both an employment business and an agency means such a person in his capacity in carrying on the employment business;

“hirer” means a person (including an employment business) to whom an agency or employment business introduces or supplies or holds itself out as being capable of introducing or supplying a work-seeker;

“publication” means any publication whether in paper or electronic form;

“work-finding services” means services (whether by the provision of information or otherwise) provided -

- (a) by an agency to a person for the purpose of finding that person employment or seeking to find that person employment;
- (b) by an employment business to an employee of the employment business for the purpose of finding or seeking to find another person, with a view to the employee acting for and under the control of that other person;
- (c) by an employment business to a person (the “first person”) for the purpose of finding or seeking to find another person (the “second person”), with a view to the first person becoming employed by the employment business and acting for and under the control of the second person;

“work-seeker” means a person to whom an agency or employment business provides or holds itself out as being capable of providing work-finding services.

The meaning of “connected”

3. – (1) For the purposes of these Regulations a person is connected with -

- (a) his spouse or minor child or step child;
- (b) any individual who employs him or is his employee;
- (c) any person who is in partnership with him;
- (d) any company of which he is a director or other officer and any company connected with that company;
- (e) in the case of a company -

- (i) any person who is a director or other officer of that company;
 - (ii) any subsidiary or holding company of that company and any person who is a director or other officer, or an employee of any such subsidiary or holding company;
 - (iii) any company of which the same person or persons have control; and
- (f) in the case of a trustee of a trust, a beneficiary of the trust, and any person to whom the terms of the trust confer a power that may be exercised for that person's benefit.

(2) For the purposes of paragraph (1)(e)(iii) of this regulation a person is to be taken as having control of a company if -

- (a) he or any person with whom he is connected is a director of that company or of another company which has control of it;
- (b) the directors of that company or another company which has control of it (or any of them) are accustomed to act in accordance with his directions or instructions; or
- (c) he is entitled to exercise, or control the exercise of, one third or more of the voting power at any general meeting of the company or of another company which has control of it.

Transitional and Saving Provisions and Revocation

4. – (1) The transitional and saving provisions in Schedule 1 shall apply.

(2) Subject to the provisions of Schedule 1, the following statutory instruments are hereby revoked -

- (a) the Conduct of Employment Agencies and Employment Businesses Regulations 1976**(a)**;
- (b) the Employment Agencies Act 1973 (Charging fees to Workers) Regulations 1976**(b)**; and
- (c) the Employment Agencies Act 1973 (Charging fees to Au Pairs) Regulations 1981**(c)**.

PART II

GENERAL OBLIGATIONS

Restriction on requiring work-seekers to use additional services

5. - Neither an agency nor an employment business may make the provision to a work-seeker of work-finding services conditional upon the work-seeker -

(a) S.I. 1976 No. 715.

(b) S.I. 1976 No. 714.

(c) S.I. 1981 No. 1481

- (a) using other services for which the Act does not prohibit the charging of a fee, or
- (b) hiring or purchasing goods

whether provided by the agency or the employment business or by any person with whom the agency or employment business is connected.

Restriction on detrimental action relating to work-seekers working elsewhere

6. – (1) Neither an agency nor an employment business may (whether by the inclusion of a term in a contract with a relevant work-seeker or otherwise) -

- (a) subject or threaten to subject a relevant work-seeker to any detriment on the ground that -

- (i) the relevant work-seeker has terminated or given notice to terminate any contract between them, or

- (ii) in the case of an employment business, the relevant work-seeker has taken up or proposes to take up employment with any other person; or

- (b) require the relevant work-seeker to notify the agency or the employment business, or any person with whom it is connected, of the identity of any future employer of the relevant work-seeker.

(2) For the avoidance of doubt, the following shall not constitute a detriment within the meaning of paragraph (1)(a) -

- (a) the loss of any benefits to which the relevant work-seeker might have become entitled had he not terminated the contract,

- (b) the recovery of losses incurred by an agency or employment business as a result of the failure of the relevant work-seeker to perform work he has agreed to perform,

- (c) a requirement in a contract with the agency or employment business for the work-seeker to give a period of notice which is reasonable to terminate the contract.

(3) In this regulation, “relevant work-seeker” means any work-seeker other than, in the case of an employment business, a work-seeker who is or will be employed by the employment business under a contract of service or apprenticeship.

Restriction on providing work-seekers in industrial disputes

7. – (1) Subject to paragraph (2) an employment business shall not introduce or supply a work-seeker to a hirer to perform –

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

unless in either case the employment business does not know, and has no reasonable grounds for knowing, that the first worker is taking part in a strike or other industrial action.

(2) Paragraph (1) shall not apply if, in relation to the first worker, the strike or other industrial action in question 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^(a).

Restriction on paying work-seekers’ remuneration

8. - (1) Subject to paragraph (2), an agency shall not, in respect of a work-seeker whom the agency has introduced or supplied to a hirer -

- (a) pay to;
- (b) make arrangements for the payment to; or
- (c) introduce or refer the hirer to any person with whom the agency is connected with a view to that person paying to, or making arrangements for the payment to;

the work-seeker, his remuneration arising from the employment with the hirer.

(2) Paragraph (1) shall not apply in the case of an introduction or supply of a work-seeker to a hirer where -

- (a) (i) the agency is permitted by regulation 26(1) to charge a fee to that work-seeker in respect of that introduction or supply; and
(ii) the agency complies with the provisions of regulation 25 and Schedule 2; or
- (b) the hirer and the agency are connected.

Restriction on agencies and employment businesses purporting to act on a different basis

9. – (1) Neither an agency nor an employment business may, in relation to the introduction or supply of a work-seeker to a hirer, purport to the work-seeker to be acting as an agency and purport to the hirer to be acting as an employment business.

(a) 1992 c.52.

(2) Neither an agency nor an employment business may, in relation to the introduction or supply of a work-seeker to a hirer, purport to the work-seeker to be acting as an employment business and purport to the hirer to be acting as an agency.

Restriction on charges to hirers

10. – (1) Any term of a contract between an employment business and a hirer which is contingent on a work-seeker taking up employment with the hirer or working for the hirer pursuant to being supplied by another employment business is unenforceable by the employment business in relation to that work-seeker unless the contract provides that instead of a transfer fee the hirer may by notice elect for a hire period of such length as is specified in the contract during which the work-seeker will be supplied to the hirer -

- (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 hirer than those which applied immediately before the employment business received the notice.

(2) In paragraph (1), “transfer fee” means any payment in connection with the work-seeker taking up employment with the hirer or in connection with the work-seeker working for the hirer pursuant to being supplied by another employment business.

(3) Any term as mentioned in paragraph (1) is unenforceable where the employment business does not supply the work-seeker to the hirer, in accordance with the contract, for the duration of the hire period referred to in paragraph (1) unless the employment business is in no way at fault.

(4) Any term of a contract between an employment business and a hirer which is contingent on any of the following events, namely a work-seeker -

- (a) taking up employment with the hirer;
- (b) taking up employment with any person (other than the hirer) to whom the hirer has introduced him; or
- (c) working for the hirer pursuant to being supplied by another employment business,

is unenforceable by the employment business in relation to the event concerned where the work-seeker begins such employment or begins working for the hirer pursuant to being supplied by another employment business, as the case may be, after the end of the relevant period.

(5) In paragraph (4), “the relevant period” means whichever of the following periods ends later, namely -

- (a) the period of 8 weeks commencing on the day after the day on which the work-seeker last worked for the hirer pursuant to being supplied by the employment business; or
- (b) subject to paragraph (6), the period of 14 weeks commencing on the first day on which the work-seeker worked for the hirer pursuant to the supply of that work-seeker to that hirer by the employment business.

(6) In determining for the purposes of paragraph (5)(b) the first day on which the work-seeker worked for the hirer pursuant to the supply of that work-seeker to that hirer by the employment business, no account shall be taken of any supply that occurred prior to a period of more than 42 days during which that work-seeker did not work for that hirer pursuant to being supplied by that employment business.

(7) An employment business shall not -

(a) seek to enforce against the hirer, or otherwise seek to give effect to, any term of a contract which is unenforceable by virtue of paragraph (1), (3) or (4); or

(b) otherwise directly or indirectly request a payment to which by virtue of this regulation the employment business is not entitled.

Entering into a contract on behalf of a client

11. – (1) An employment business shall not enter into, nor purport to enter into, a contract -

(a) on behalf of a work-seeker, with a hirer; or

(b) on behalf of a hirer, with a work-seeker.

(2) An agency shall not enter into, nor purport to enter into, a contract -

(a) on behalf of a work-seeker, with a hirer; or

(b) on behalf of a hirer, with a work-seeker,

unless the requirements in paragraph (3) are satisfied.

(3) The requirements referred to in paragraph (2) are that -

(a) the person for whom the agency acts has appointed the agency as its agent with authority to enter into the contract on his behalf; and

(b) where the agency acts for the work-seeker, it is permitted by regulation 26(1) to charge a fee in relation to the introduction or supply to which the contract relates.

(4) Where an agency enters into a contract on behalf of a work-seeker with a hirer, or on behalf of a hirer with a work-seeker, the agency shall ensure that the terms of the contract are notified to the party on whose behalf the agency entered into the contract, as soon as possible and in any event no later than the end of the fifth business day following the day on which the agency entered into the contract.

(5) Where an agency enters into a contract on behalf of a work-seeker with a hirer, or on behalf of a hirer with a work-seeker, the agency shall ensure that the terms of the contract are notified to the party or parties to the contract other than the party on whose behalf the contract was entered into, as soon as possible and in any event no later than the end of the fifth business day following the day on which the agency entered into the contract.

(6) An agency shall not enter into a contract between a work-seeker and a hirer on behalf of both the work-seeker and the hirer.

Prohibition on employment businesses withholding payment to work-seekers on certain grounds

12. - An employment business shall not, in respect of a work-seeker whom it supplies to a hirer, withhold or threaten to withhold from the work-seeker (whether by means of the inclusion of a term in a contract with the work-seeker or otherwise) the whole or any part of any payment in respect of any work done by the work-seeker on any of the following grounds -

- (a) non-receipt of payment from the hirer in respect of the supply of any service provided by the employment business to the hirer;
- (b) the work-seeker's failure to produce documentary evidence authenticated by the hirer of the fact that the work-seeker has worked during a particular period of time, provided that this provision shall not prevent the employment business from satisfying itself by other means that the work-seeker worked for the particular period in question;
- (c) the work-seeker not having worked during any period other than that to which the payment relates; or
- (d) any matter within the control of the employment business.

PART III

REQUIREMENTS TO BE SATISFIED BEFORE SERVICES ARE PROVIDED

Notification of charges and the terms of offers

13. – (1) Subject to paragraph (2), on the first occasion that an agency or employment business offers to provide or arrange the provision of a service to a work-seeker, the agency or employment business shall give notice to the work-seeker stating -

- (a) whether that service is a work-finding service for which the Act prohibits the agency or employment business from charging a fee; and
- (b) whether any other services or goods which may be provided by the agency or employment business or any other person are services or goods for which the agency or employment business 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
 - (iv) the circumstances, if any, in which refunds or rebates are payable to the work-seeker, the scale of such refunds or rebates, and if no refunds or rebates are payable, a statement to that effect.

(2) Paragraph (1) shall apply only where one or more services or goods referred to in paragraph (1)(b) for which the work-seeker will or may be charged a fee may be provided to the work-seeker.

(3) An agency or employment business shall give a further notice stating the matters referred to in paragraph (1)(b) where, subsequent to the first occasion that it offers to provide or arrange the provision of a service to a work-seeker, the agency or employment business or the person providing to the work-seeker any services or goods referred to in paragraph 1(b), introduces or varies any fees in relation to any services or goods referred to in paragraph 1(b).

(4) Where an agency or employment business offers any gift or makes an offer of any benefit to a work-seeker, in order to induce him to engage it to provide him with services, the agency or employment business shall notify the work-seeker of the terms on which the gift or benefit is offered before the offer is open for acceptance by the work-seeker.

Requirement to obtain agreement to terms with work-seekers

14. – (1) Subject to paragraph (7), before first providing any work-finding services to a work-seeker, an agency or employment business shall obtain the agreement of the work-seeker to the terms which apply or will apply as between the agency or employment business and the work-seeker including -

(a) whether the agency or employment business will operate as an employment agency or an employment business in relation to the work-seeker;

(b) the type of work the agency or employment business will find or seek to find for the work-seeker; and

(c) in the case of an employment business, the terms referred to in regulation 15, and in the case of an agency which is to provide any work-finding services mentioned in regulation 16, the terms referred to in that regulation.

(2) Subject to paragraph (3), an agency or employment business shall ensure that -

(a) all terms in respect of which the agency or employment business has obtained a work-seeker's agreement are recorded in a single document; and

(b) a copy of any such document is given by the agency or employment business to the work-seeker with whom they are agreed before the agency or employment business provides any services to the work-seeker to which the terms contained in such document relate.

(3) Paragraph (2) shall not apply in the case of an employment business where the work-seeker has been given a written statement of particulars of employment in accordance with Part I of the Employment Rights Act 1996.

(4) Neither an agency nor an employment business may vary any terms set out in a document issued in accordance with paragraph (2), unless the work-seeker to whom they relate agrees to the variation.

(5) If the agency or employment business and the work-seeker agree to any variation in the terms set out in the document referred to in paragraph (2), the agency or employment business shall as soon as possible and in any event no later than the end of the fifth business day following the day on which the agency or employment business and the work-seeker agree to the

variation give to the work-seeker a single document containing details of the terms as agreed to be varied and stating the date on or after which it is agreed that the varied terms are to apply.

(6) Neither an agency nor an employment business may make the continued provision of any services by it to a work-seeker conditional on the agreement by the work-seeker to any such variation.

(7) This regulation shall not apply in the case of an agency where the only service provided by the agency to the work-seeker concerned is the provision of information to him in the form of a publication.

Content of terms with work-seekers: Employment businesses

15. In the case of an employment business, the terms to be agreed in accordance with regulation 14 shall include -

(a) whether the work-seeker is or will be employed by the employment business under a contract of service or apprenticeship, or a contract for services, and in either case, the terms and conditions of employment of the work-seeker which apply, or will apply;

(b) an undertaking that the employment business will pay the work-seeker in respect of work done by him, whether or not it is paid by the hirer in respect of that work;

(c) the length of notice of termination which the work-seeker will be required to give the employment business, and which he will be entitled to receive from the employment business, in respect of particular assignments with hirers;

(d) either -

(i) the rate of remuneration payable to the work-seeker; or

(ii) the minimum rate of remuneration the employment business reasonably expects to achieve for the work-seeker;

(e) details of the intervals at which remuneration will be paid; and

(f) details of any entitlement to annual holidays and to payment in respect of such holidays.

Content of terms with work-seekers: Agencies

16. In the case of an agency which is to provide the work-seeker with work-finding services for which it is permitted by regulation 26(1) or (4) to charge a fee, the terms to be agreed in accordance with regulation 14 shall include -

(a) details of the work finding services to be provided by the agency;

(b) details of the agency's authority, if any, to act on behalf of the work-seeker, including whether, and if so, upon what terms it is (in accordance with regulation 11) authorised to enter into contracts with hirers on behalf of the work-seeker;

- (c) a statement as to whether the agency is authorised to receive money on behalf of the work-seeker;
- (d) details of any fee which may be payable by the work-seeker to the agency for work-finding services including–
 - (i) the amount or method of calculation of the fee;
 - (ii) a description of the particular work-finding service to which the fee relates;
 - (iii) the circumstances, if any, in which refunds or rebates are payable to the work-seeker, the scale of such refunds or rebates, and if no refunds or rebates are payable, a statement to that effect; and
 - (iv) the method of payment of the fee and, if the fee is to be deducted from the work-seeker's earnings received by the agency, the circumstances in which it is to be so deducted;
- (e) a statement as to whether the work-seeker is required to give notice to terminate the contract between the work-seeker and the agency and, if so, a statement as to the length of the notice required; and
- (f) a statement as to whether the work-seeker is entitled to receive notice of termination of the contract between the work-seeker and the agency and, if so, a statement of the length of the notice.

Requirement to obtain agreement to terms with hirers

17. – (1) Before first providing services (other than the provision of information in the form of a publication) to a hirer, an agency or employment business shall agree with the hirer the terms which apply or will apply between the agency or employment business and the hirer, including -

- (a) a statement as to whether the agency or employment business will operate as an employment agency or an employment business in relation to the hirer;
- (b) details of any fee which may be payable by the hirer to the agency or employment business including -
 - (i) the amount or method of calculation of such fee; and
 - (ii) the circumstances, if any, in which refunds or rebates are payable to the hirer, the scale of such refunds or rebates, and if no refunds or rebates are payable, a statement to that effect; and
- (c) in the case of an employment business, details of the procedure to be followed if a work-seeker introduced or supplied to the hirer proves unsatisfactory;
- (d) in the case of an agency, details of the agency's authority, if any, to act for the hirer, including whether, and if so upon what terms, it is (in accordance with regulation 11) authorised to enter into contracts with work-seekers on behalf of the hirer.

(2) The agency or employment business shall ensure that all of the terms are recorded in a single document and that, unless the hirer has a copy thereof, a copy is sent to the hirer as soon as is practicable.

(3) If the agency or employment business and the hirer agree to any variation in the terms set out in the document referred to in paragraph (2), the agency or employment business shall, unless the hirer has a copy thereof, as soon as is practicable, give to the hirer a document containing details of the variation and stating the date on or after which it is agreed that the varied terms are to apply.

PART IV

REQUIREMENTS TO BE SATISFIED IN RELATION TO THE INTRODUCTION OR SUPPLY OF A WORK-SEEKER TO A HIRER

Information to be obtained from a hirer

18. - Neither an agency nor an employment business may introduce or supply a work-seeker to a hirer unless the agency or employment business has obtained sufficient information from the hirer to select a suitable work-seeker for the position which the hirer seeks to fill, including the following information -

- (a) the identity of the hirer and, if applicable, the nature of the hirer's business;
- (b) the date on which the hirer requires a work-seeker to commence work and the duration, or likely duration, of the work;
- (c) the position, including the type of work a work-seeker in that position would be required to do, the location at which and the hours during which he would be required to work and any risks to health or safety known to the hirer and what steps the hirer has taken to prevent or control such risks;
- (d) the experience, training, qualifications and any authorisation which the hirer considers are necessary, or which are required by law, or by any professional body, for a work-seeker to possess in order to work in the position;
- (e) any expenses payable by or to the work-seeker; and
- (f) in the case of an agency -
 - (i) the minimum rate of remuneration and any other benefits which the hirer would offer to a person in the position which it seeks to fill, and the intervals at which the person would be paid; and
 - (ii) where applicable, the length of notice which a work-seeker in such a position would be required to give, and entitled to receive, to terminate the employment with the hirer.

Confirmation to be obtained about a work-seeker

19. - Neither an agency nor an employment business may introduce or supply a work-seeker to a hirer unless it has obtained confirmation -

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

Steps to be taken for the protection of the work-seeker and the hirer

20. – (1) Neither an agency nor an employment business may introduce or supply a work-seeker to a hirer unless the agency or employment business has -

- (a) taken all such steps, as are reasonably practicable, to ensure that the work-seeker and the hirer are each aware of any requirements imposed by law, or by any professional body, which must be satisfied by the hirer or the work-seeker to enable the work-seeker to work for the hirer in the position which the hirer seeks to fill; and

- (b) without prejudice to any of its duties under any enactment or rule of law in relation to health and safety at work, made all such enquiries, as are reasonably practicable, to ensure that it would not be detrimental to the interests of the work-seeker or the hirer for the work-seeker to work for the hirer in the position which the hirer seeks to fill.

(2) Where an employment business receives or obtains information, which gives it reasonable grounds to believe that a work-seeker is unsuitable for the position with a hirer for which he is being supplied, it shall, without delay -

- (a) inform the hirer of that information; and

- (b) end the supply of that work-seeker to the hirer.

(3) Where an employment business receives or obtains information which indicates that a work-seeker may be unsuitable for the position with a hirer for which he is being supplied, but where that information does not give it reasonable grounds to believe that the work-seeker is unsuitable, it shall, without delay -

- (a) inform the hirer of that information; and

- (b) commence making such further enquiries as are reasonably practicable as to the suitability of the work-seeker for the position concerned, and inform the hirer of the enquiries made and any further information it receives or obtains.

(4) Where, as a result of the enquiries made under paragraph (3) an employment business has reasonable grounds to believe that the work-seeker is unsuitable for the position concerned, it shall, without delay -

- (a) inform the hirer of that information; and

- (b) end the supply of that work-seeker to the hirer.

(5) Where an agency, having introduced a work-seeker to a hirer, receives or obtains information, which indicates that the work-seeker is or may be unsuitable for the position in which he has been employed with that hirer, it shall inform the hirer of that information without delay.

(6) Paragraph (5) shall apply for a period of 3 months from the date of introduction of a work-seeker by an agency to a hirer.

(7) In this regulation, “without delay “ means on the same day, or where that is not reasonably practicable, on the next business day.

Provision of information to work-seekers and hirers

21. – (1) An agency or employment business shall ensure that at the same time as –

(a) it proposes a particular work-seeker to a hirer -

(i) it gives to the hirer (whether orally or otherwise) all information it has been provided with about the matters referred to in regulation 19; and

(ii) in the case of an employment business, the information it gives to the hirer (whether orally or otherwise) includes whether the work-seeker to be supplied will be employed by it under a contract of service or apprenticeship or a contract for services;

(b) it offers a work-seeker a position with a hirer -

(i) it gives to the work-seeker (whether orally or otherwise) all information it has been provided with about the matters referred to in paragraphs (a) to (e) and, where applicable, paragraph (f) of regulation 18; and

(ii) in the case of an employment business that has not agreed a rate of remuneration in accordance with regulation 15(d)(i), it informs the work-seeker (whether orally or otherwise) of the rate of remuneration it will pay him to work in that position.

(2) Where any of the information referred to in paragraph (1) is not given to the work-seeker or hirer, as the case may be, in paper form or by electronic means at the time referred to in paragraph (1), the agency or employment business shall confirm such information in paper form or by electronic means to the work seeker or hirer, as the case may be, as soon as possible and in any event no later than the end of the third business day following the day on which it was given to the work seeker or hirer in accordance with paragraph (1).

Additional requirements where professional qualifications are required or where work-seekers are to work with vulnerable persons

22. – (1) Where the work-seeker is -

(a) required by law, or any professional body, to have any qualifications or authorisation to work in a position for which he is to be supplied or introduced to a hirer;

(b) to be supplied or introduced to a hirer with a view to taking up a position which involves working with or caring for or attending any one or more persons under the age of eighteen; or

(c) to be supplied or introduced to a hirer with a view to taking up a position which involves caring for or attending any person who by reason of age, infirmity, or any other circumstances is in need of care or attention,

neither an agency nor an employment business may introduce or supply him to a hirer unless, in addition to the requirements in regulations 18 to 21, the requirements in paragraph (2) are satisfied.

(2) The requirements referred to in paragraph (1) are that the agency or employment business has -

(a) subject to paragraph (3) obtained copies of any relevant qualifications or authorisations of the work-seeker, and offered to provide copies thereof to the hirer;

(b) subject to paragraph (3), obtained two references from persons not related to the work-seeker who have agreed that the reference they provide may be disclosed to the hirer, and offered to provide copies thereof to the hirer; and

(c) in a case falling within paragraph (1)(b) or (c), taken all other reasonably practicable steps to confirm that the work-seeker is not unsuitable for the position concerned.

(3) Where the agency or employment business has taken all reasonably practicable steps to comply with the requirements in paragraph (2)(b) and has been unable to do so fully, it may instead -

(a) comply with those requirements to the extent that it is able to do so;

(b) inform the hirer that it has taken all reasonably practicable steps to comply fully with those requirements and been unable to do so; and

(c) inform the hirer of the details of the steps that it has taken in order to try and comply fully with those requirements.

PART V

SPECIAL SITUATIONS

Situations where more than one agency or employment business is involved

23. – (1) Neither an agency nor an employment business (“A”) may enter into any contract or arrangement with another agency or employment business (“B”) with a view to B providing or facilitating the provision to a work-seeker or a hirer of any services of an agency or an employment business unless -

(a) A has made enquiries and received satisfactory answers to those enquiries, to ascertain that B is suitable to act as an agency or employment business;

(b) A and B have agreed in what capacity each of them will act, namely whether as an agency or an employment business;

(c) where A is acting as an agency in relation to a work-seeker whom it is permitted by regulation 26(1) to charge for work finding services, -

(i) A has ensured that the hirer has been informed that any payment due to the work-seeker must be paid either directly to the work-seeker, or to A, rather than to B; or

(ii) where A and B have agreed that B may receive any payment due to the work-seeker -

(aa) they have agreed that B shall pass the monies to A or to the work-seeker within 10 days of receipt by B of the same; and

(bb) provided that the applicable law of the agreement between A and B does not prevent it, they have agreed that the work-seeker may enforce the term referred to in sub-paragraph (c)(ii)(aa) in the event that B fails to pass the monies to A or the work-seeker within the 10 day period referred to therein; and

(d) the terms of the agreement reached between A and B in accordance with sub-paragraphs (b) and (c)(ii) are recorded in paper form or by electronic means.

(2) Neither an agency nor an employment business (“A”) may assign or sub-contract any of its obligations under any contract or arrangement with a work-seeker or hirer to another agency or employment business (“B”) unless -

(a) A has obtained the prior consent of the work-seeker or hirer for whom it acts to B performing those obligations in place of A;

(b) the terms upon which those obligations are assigned or sub-contracted are recorded in a single document; and

(c) A has given the work-seeker or hirer, for whom it acts, a copy of that document.

Situations where work-seekers are provided with travel or required to live away from home

24. – (1) Neither an agency nor an employment business may arrange for an au pair to take up a position where the au pair is to be required to repay the hirer or the agency or employment business the fare for the journey from the au pair’s home to the place of work, or from the place of work to the au pair’s home, out of money payable to the au pair by the hirer or the agency or employment business.

(2) Neither an agency nor an employment business may arrange for a work-seeker to take up a position other than as the hirer’s employee (within the meaning of section 230(1) of the Employment Rights Act 1996) if in order to take up that position the work-seeker must occupy accommodation other than his home, unless the conditions in paragraph (3) are satisfied.

(3) The conditions referred to in paragraph (2) are that the agency or employment business has taken all reasonably practicable steps to ensure that–

(a) suitable accommodation will be available for the work-seeker before he starts work;

(b) the work-seeker has been provided with details of the accommodation referred to in sub-paragraph (a), including the terms on which it is offered and any cost to the work-seeker; and

(c) suitable arrangements have been made for the work-seeker to travel to such accommodation.

(4) Where a work-seeker is -

(a) to be introduced or supplied to a hirer other than as the hirer's employee (within the meaning of section 230(1) of the Employment Rights Act 1996), or is under the age of eighteen; and

(b) the agency, employment business or hirer has arranged free travel or payment of fares for the work-seeker's journey to the place of work,

the agency or employment business shall, if the work does not start or upon it ending, either arrange free travel for the work-seeker's return journey or pay his return fare, or obtain an undertaking from the hirer that he will arrange free travel or pay the return fare. The agency or employment business shall give notice to the work-seeker setting out the details of the free travel or payment of fares including any conditions on which the same are offered.

(5) If a hirer does not comply with his undertaking referred to in paragraph (4), the agency or employment business shall either arrange free travel for the return journey of the work-seeker or pay his fare.

(6) Where a work-seeker is seeking employment in private domestic service, or to be an au pair, an agency or employment business, providing work-finding services to him with a view to his obtaining a position in either of those occupations, shall ensure that the work-seeker is provided with such information as the work-seeker may reasonably request in order to decide whether or not to take up any particular position.

(7) In the case of a work-seeker who is under the age of eighteen, neither an agency nor an employment business may introduce or supply him to any hirer with a view to him taking up a position which will require him to live away from home unless the condition in paragraph (8) is satisfied.

(8) The condition referred to in paragraph (7) is that the consent to the work-seeker taking up the position, in respect of which the agency or employment business seeks to introduce or supply him to the hirer, has previously been given by, and obtained by the agency or employment business directly from, a parent or guardian of the work-seeker.

(9) Neither an agency nor an employment business may arrange for a work-seeker to take up a position with a hirer on the basis that the work-seeker is to be loaned money, by either the hirer or the agency or employment business, to meet his travel or other expenses in order to take up

that position, on terms that the work-seeker is to be required to repay the lender a sum greater than the sum loaned.

(10) Where an agency, employment business or hirer is to lend money to a work-seeker to meet his travel or other expenses to be incurred in order to take up a position with a hirer, the agency or employment business shall give to the work-seeker a document setting out details of the amount to be loaned and details of the terms for repayment save, in the case of a loan from the hirer, to the extent that the agency or employment business is not aware of any such details.

(11) Paragraph (7) does not apply in relation to a person under the age of eighteen to whom section 25 of the Children and Young Persons Act 1933(a) or section 42 of the Children and Young Persons Act 1963(b) applies.

PART VI

CLIENT ACCOUNTS AND CHARGES TO WORK-SEEKERS

Client accounts

25. – (1) In this regulation -

“client account” means a current or deposit account at a credit institution operated by an agency for holding clients’ money in accordance with the provisions of this regulation and Schedule 2;

“credit institution” means a credit institution as defined in article 1 of Council Directive 77/780/EEC, the First Council Directive on the co-ordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions, that is to say, an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account(c);

“hirer’s deposit” means money held or received by an agency by way of an advance against payment to a work-seeker in respect of work to be done by that work-seeker, where the advance may, in accordance with the terms of any contract between the work-seeker and the hirer, be repayable to the hirer;

an agency receives money on behalf of a work-seeker when the agency or any person connected with it receives money directly or indirectly from a hirer or any person connected with a hirer pursuant to the terms of any contract or arrangement between the work-seeker and the hirer, whether or not the agency has agreed with the work-seeker or the hirer that it will receive such money on the work-seeker’s behalf;

references to receiving money on behalf of a work-seeker include the receipt of money by way of an advance against payment to a work-seeker in respect of work to be done by that work-seeker, where the terms of any contract between the work-seeker and the hirer stipulate that the advance is not repayable to the hirer in any circumstances;

(a) 1933 c.12.

(b) 1963 c.37.

(c) OJ No. L 322, 17.12.77, p.30.

references to receiving money on behalf of a work-seeker do not include references to receiving a hirer's deposit.

(2) Save in a case falling within regulation 8(2)(b), an agency shall not request or directly or indirectly receive money on behalf of a work-seeker unless -

(a) such monies consist of the work-seeker's remuneration from employment in any of the occupations listed in Schedule 3; and

(b) the agency maintains one or more client accounts in accordance with Schedule 2.

(3) An agency which directly or indirectly receives money on behalf of a work-seeker in contravention of paragraph (2) shall no later than the end of the second business day following the day on which the money is received pay such money or an equivalent sum to -

(a) the work-seeker on whose behalf it is received;

(b) an agency which is capable of receiving such money without contravening paragraph (2); or

(c) the person from whom it was received.

(4) All money received by an agency on behalf of a work-seeker, other than -

(a) cash paid to the work-seeker no later than the end of the second business day following the day of receipt by the agency or any person connected with it;

(b) cheques and banker's drafts, made out or as the case may be drawn in favour of the work-seeker; and

(c) money dealt with in accordance with paragraph (3);

shall be paid into a client account no later than the end of the second business day following the day on which the money is received.

(5) All cheques and banker's drafts referred to in paragraph (4)(b) shall be despatched no later than the end of the second business day following the day on which they are received to the work-seeker in whose favour they are made out or drawn as the case may be.

(6) On each occasion that an agency makes a payment to a work-seeker in accordance with this regulation, the agency shall also give the work-seeker a statement setting out -

(a) when and from whom the agency received the said payment;

(b) to what work done by the work-seeker it relates; and

(c) any fees or other deductions made by the agency.

(7) Subject to paragraph (8), all payments made by an agency to a work-seeker or into a client account shall (except to the extent of any amount required by law to be deducted) be made without deduction.

(8) An agency which is entitled to charge a work-seeker a fee pursuant to regulation 26(1) shall be permitted to deduct a sum equal to its fee payable by the work-seeker from any sum paid to the work-seeker or into a client account provided the work-seeker has in his contract with the agency agreed to such deduction.

(9) An agency which receives money on behalf of a work-seeker which it is required to pay into a client account shall hold it as trustee for that work-seeker, but shall not continue to hold it on any day after the expiry of ten days beginning with the day it is received, or such longer period beginning with that day as the work-seeker has previously requested.

(10) If a work-seeker at any time requests payment to him or, in accordance with paragraph 6(a) of Schedule 2, to any other person, of some or all of the money held on his behalf, the agency shall no later than the end of the second business day following the day on which the request is made pay the amount requested to the work-seeker or that other person as the case may be.

(11) In the event that an agency holds money on behalf of a work-seeker for a period in excess of thirty days (beginning with the day on which it is received by the agency), it shall no later than the end of the thirty second day give a statement to the work-seeker setting out the amount held on his behalf as at close of business on the thirtieth day and shall continue to give statements at intervals of not more than thirty days thereafter until all sums held by the agency on behalf of the work-seeker have been paid to the work-seeker.

(12)(a) Where money received by an agency on behalf of a work-seeker is in the form of a cheque in favour of the agency, the periods referred to in paragraphs (9) and (11) shall start with the day on which the cheque clears.

(b) All invoices issued by an agency in respect of work done by a work-seeker must state that where payment is to be made by cheque or bankers draft, the said cheque or bankers draft must be made out, or as the case may be, drawn in favour of the agency's client account.

(13) Subject to paragraph (14), any hirer's deposit received by an agency shall be paid into a client account, without deduction (except to the extent of any amount required by law to be deducted), no later than the end of the second business day following the day on which the money is received.

(14) An agency shall not request or directly or indirectly receive a hirer's deposit, unless that deposit, if it became payable to the work-seeker, would be money which the agency would be entitled to request or directly or indirectly receive on behalf of the work-seeker under paragraph (2).

(15) Where an agency improperly receives a hirer's deposit, it shall, no later than the end of the second business day following the day on which the money is received, pay that deposit or an equivalent sum to -

(i) an agency which is capable of receiving such deposit; or

(ii) the person from whom it was received.

(16) Any hirer's deposit received by an agency shall be held by the agency as trustee for the hirer until such time as the money becomes payable to the work-seeker or the hirer in accordance with the terms of any contract between the work-seeker and the hirer.

(17) Where a work-seeker becomes entitled, under the terms of any contract with a hirer, to any money paid to an agency by way of a hirer's deposit, that money shall be treated as money received by the agency on behalf of that work-seeker for the purposes of paragraphs (6) to (12) (and, in the case of paragraph (9), as such money which it is required to pay into a client account), and the agency shall be treated as having received the money on behalf of the work-seeker on the day on which the work-seeker became entitled to it.

Circumstances in which fees may be charged to work-seekers

26. – (1) Subject to paragraphs (2) and (3), the restriction on charging fees to work-seekers contained in section 6(1)(a) of the Act shall not apply in respect of a fee charged by an agency for the service provided by it of finding or seeking to find a work-seeker employment in any of the occupations listed in Schedule 3, and in such a case any fee charged by the agency may consist only of a charge or commission payable out of the work-seeker's earnings in any such employment which the agency has found for him.

(2) Paragraph (1) shall not apply where the agency, or any person connected with it, charges a fee to the hirer in respect of the service of supplying or introducing that work-seeker to him.

(3) In any case in which the agency is connected with the hirer, paragraph (1) only applies if, prior to the provision of the service in respect of which the fee is to be charged, the agency informs the work-seeker of the fact that it is connected with the hirer.

(4) Subject to paragraph (5), the restrictions on charging fees to work-seekers contained in section 6(1)(a) of the Act shall not apply to any fee charged to a work-seeker by an agency in respect of the inclusion of information about the work-seeker in a publication wholly for one or both of the following purposes, namely the purpose of finding work-seekers employment in, or providing hirers with information about work-seekers in relation to, any of the occupations listed in Schedule 3.

(5) Paragraph (4) shall not apply unless -

(a) either -

(i) the only work-finding service provided by the agency or any person connected with it to the work-seeker is the service described in paragraph (4); or

(ii) the fee charged to the work-seeker amounts to no more than a reasonable estimate of the cost of production and circulation of the publication attributable to the inclusion of information about that work-seeker in the publication; and

(b) in addition to the requirements in regulations 13, 14 and 16, the agency has, before it entered into the contract with the work-seeker by reference to which the fee is to be charged, made available to him a copy of a current edition of the publication (or, where the publication exists only in electronic form, given him access to a current edition of the publication) in which it is offering to include information about him.

(6) Subject to paragraph (7), the restrictions on charging fees to work-seekers contained in section 6(1)(a) of the Act shall not apply to any fee consisting of a charge to a work-seeker in respect of the purchase of or subscription for a publication in paper form containing information about employers.

(7) Paragraph (6) shall not apply unless -

(a) the only work-finding service provided by the agency or any person connected with it to the work-seeker is making available the information contained in the publication; and

(b) the work-seeker is given the opportunity by the agency to examine a current edition of the publication in paper form free of charge, in advance of purchasing or subscribing for it.

(8) Without prejudice to paragraph (1), the restriction on charging fees to work-seekers contained in section 6(1)(a) of the Act shall not apply in respect of a fee charged by an agency for the service provided by it of finding or seeking to find a work-seeker employment where -

(a) the work-seeker in question is a company; and

(b) the employment is in an occupation other than any of those occupations listed in Schedule 3.

PART VII

MISCELLANEOUS

Advertisements

27. – (1) Every advertisement issued or caused to be issued by an agency or employment business shall mention in either audibly spoken words or easily legible characters the full name of the agency or employment business, and whether the services it advertises are those of an agency or an employment business, as the case may be.

(2) Neither an agency nor an employment business may issue or cause to be issued an advertisement about positions which hirers seek to fill unless the agency or employment business has -

(a) information about specific positions of all types to which the advertisement relates; and

(b) in relation to each such position, the authority of the hirer concerned to find work-seekers for that position, or the authority of an agency or employment business, which has such authority to issue the advertisement or cause it to be issued.

(3) An agency or employment business shall, in every advertisement for work-seekers issued or caused to be issued by it in which rates of pay are given, state the nature of the work, the location at which the work-seeker would be required to work, and the minimum experience, training or qualifications which the work-seeker would be required to have in order to receive those rates of pay.

Confidentiality

28. – (1) Subject to the Act, these Regulations and any other enactment or other rule of law relating to the disclosure of information, neither an agency nor an employment business may disclose information relating to a work-seeker, without the prior consent of that work-seeker, except -

- (a) for the purpose of providing work-finding services to that work-seeker; or
- (b) for the purposes of any legal proceedings (including arbitration); or
- (c) in the case of a work-seeker who is a member of a professional body, to the professional body of which he is a member.

(2) Without prejudice to the generality of paragraph (1), an agency shall not disclose information relating to a work-seeker to any current employer of that work-seeker without that work-seeker's prior consent, which has not by the time of such disclosure been withdrawn, and shall not make the provision of any services to that work-seeker conditional upon such consent being given or not withdrawn.

Records

29. – (1) Subject to paragraph (6), every agency and every employment business shall keep records which are sufficient to show whether the provisions of the Act and these Regulations are being complied with including (subject to paragraph (3)) -

- (a) the particulars specified in Schedule 4, in relation to every application received by the agency or employment business from a work-seeker;
- (b) the particulars specified in Schedule 5, in relation to every application received by the agency or employment business from a hirer; and
- (c) the particulars specified in Schedule 6 relating to dealings with other agencies and employment businesses.

(2) The records mentioned in paragraph (1) shall be kept for at least one year from the date of their creation, and in the case of the particulars referred to in sub-paragraphs (a) and (b) of paragraph (1), at least one year after the date on which the agency or employment business last provides services in the course of its business as an agency or an employment business to the applicant to whom they relate.

(3) Neither an agency nor an employment business is required to keep the particulars referred to in paragraphs (1)(a) or (1)(b) in respect of applications on which the agency or employment business takes no action.

(4) The records mentioned in paragraph (1) may be kept by an agency or employment business, either at any premises it uses for or in connection with the carrying on of an agency or employment business, or elsewhere. If they are kept elsewhere, the agency or employment business shall ensure that they are readily accessible by it and that it is reasonably practicable for any person employed by the agency or employment business at any premises it uses for or in connection with the carrying on of an agency or employment business to arrange for them to be

delivered no later than the end of the second business day following the day on which a request for them is made, to the premises at which that person is employed.

(5) The records an agency or employment business is required to keep pursuant to this regulation may be kept in electronic form, provided that the information so recorded is capable of being reproduced in legible form.

(6) This regulation does not apply to any records which an agency is required to preserve in accordance with paragraph 12 of Schedule 2.

Civil liability

30. – (1) Without prejudice to -

- (a) any right of action; and
- (b) any defence

which exists or may be available apart from the provisions of the Act and these Regulations, failure by an agency or employment business to comply with any of the provisions of the Act or of these Regulations shall, so far as it causes damage, be actionable.

(2) In this regulation, “damage” includes the death of, or injury to, any person (including any disease and any impairment of that person’s physical or mental condition).

Effect of prohibited or unenforceable term and recoverability of monies

31. – (1) Where any term of a contract is prohibited or made unenforceable by these Regulations, the contract shall continue to bind the parties to it if it is capable of continuing in existence without that term.

(2) Where a hirer pays any money pursuant to a contractual term which is unenforceable by virtue of regulation 10, the hirer is entitled to recover that money.

Application of these Regulations to work-seekers which are incorporated

32. – (1) In these Regulations -

- (a) any reference to a work-seeker, howsoever described, includes a work-seeker which is a company; and
- (b) the regulations mentioned below shall be modified as set out below in a case where the work-seeker is a company.

(2) Regulation 5 shall have effect so that neither an agency nor an employment business may make the provision to a work-seeker of work finding services conditional upon -

- (a) the work-seeker; or
- (b) the person who is or would be supplied by the work-seeker to carry out the work using other services, or hiring or purchasing goods, as referred to in regulation 5.

(3) Regulation 6(1)(a)(ii) shall have effect so that an employment business shall not in any contract with the work-seeker include any term designed to prevent or deter -

(a) the work-seeker from taking up (or continuing, as the case may be) employment with any other person; or

(b) the person supplied or to be supplied by the work-seeker to carry out the work from taking up (or continuing, as the case may be) employment with any person other than the employment business or the work-seeker.

(4) In regulation 15, for paragraph (f) there shall be substituted the following -

“(f) details of any period of absence to which the work-seeker is entitled and to payment in respect of the same”.

(5) In regulation 18(d), for the words “for a work-seeker” on each occasion on which they occur substitute the words “for a person supplied by the work-seeker to carry out the work”.

(6) In regulation 19 -

(a) in paragraph (a), after the words “the work-seeker” add the words “and of the person the work-seeker would supply to carry out the work”; and

(b) in paragraph (b), for the words “that the work-seeker” substitute the words “that the person who would be supplied by the work-seeker to carry out the work”.

(7) In regulations 20(a) and (b), 22, 24(9) and (10), 28 and Schedule 4 the references to “the work-seeker” shall include the person who would be supplied by the work-seeker to carry out the work.

(8) In regulations 24(2), (3), (4), (5), (7) and (8), the references to “the work-seeker” shall be read as references to the person who would be supplied by the work-seeker to carry out the work.

Electronic communications

33. – (1) Except where otherwise provided, any requirement in these Regulations -

(a) to notify, or give notice to, a person of any matter;

(b) to give or send a document to a person;

(c) to inform a person or provide a person with information;

(d) to make enquiries and to receive answers,

may only be satisfied by one of the means in paragraph (3).

(2) Any reference in these Regulations to a person giving consent to something or to obtaining another person’s consent to something shall be construed as a reference to giving or receiving that consent by one of the means in paragraph (3).

(3) The means referred to in paragraphs (1) and (2) are -

(a) giving or receiving in person the notice, document, information, enquiry, answer or consent in paper form; or

(b) sending, transmitting or receiving the notice, document, information, enquiry, answer or consent by post, facsimile or by other electronic means to an address provided for that purpose by the intended recipient,

provided that any information so given, sent or transmitted is in a form which is clearly legible by the intended recipient.

[[] 2002]

[Alan Johnson

Minister of State for Industry and the

Regions,

Department of Trade and Industry]

TRANSITIONAL AND SAVING PROVISIONS

Interpretation

1. In this Schedule –

“the 1976 Regulations” means the Conduct of Employment Agencies and Employment Businesses Regulations 1976(a);

“existing contract” means a contract entered into between –

- (a) an agency or an employment business; and
- (b) a work-seeker or a hirer;

before the coming into force of these Regulations;

“ongoing supply” means the continuous supply by an employment business of a particular work-seeker to a particular hirer to fill a particular position, which continuous supply commenced before the date on which these Regulations come into force and continues after that date;

“transfer fee” has the meaning given by regulation 10(2); and

“the transitional period” means the period of 3 months beginning on the day these Regulations come into force.

Application to existing contracts

2. – (1) Subject to the following provisions of this paragraph, these Regulations apply in respect of existing contracts with effect from the date these Regulations come into force.

(2) Regulations 5 (restriction on requiring work-seekers to use additional services), 6(1) (restriction on detrimental action), 10 (restriction on charges to hirers), 12 (prohibitions on withholding payment to work-seekers), 26 (charging fees to work-seekers) and 28(2) (prohibition on disclosure of information to current employer) shall not apply in respect of any existing contract during the transitional period.

(3) Sub-paragraph (4) applies after the end of the transitional period to existing contracts which on the date these Regulations come into force include any term, the inclusion of which is prohibited by regulation 6(1) and 12.

(4) The references in regulation 6(1) and 12 to including a term in a contract shall be construed as references to enforcing or seeking to enforce that term.

(5) After the day on which the transitional period ends, regulation 10 shall not apply to any right which has accrued on or before that day under any term, in an existing contract, which is described in regulation 10.

(a) S.I. 1976 No. 715.

(6) Sub-paragraphs (7) and (8) apply after the end of the transitional period to any existing contract between an employment business and a hirer which does not provide for a hire period as referred to in regulation 10(1).

(7) For the purposes of regulation 10(1), the contract between the employment business and the hirer shall be regarded as making such provision as is specified in that regulation where -

(a) the employment business has given notice to the hirer stating that, instead of a transfer fee, the hirer may elect for a hire period of such length as is specified in the notice during which the work-seeker will be supplied to the hirer on terms no less favourable to the hirer than those which applied immediately before the employment business received the hirer's election or, where there has been no supply, on the terms set out in the notice; and

(b) the employment business has given such notice to the hirer (and has not withdrawn the same) at any time from the day on which these Regulations come into force but before the work-seeker concerned -

(i) begins employment with the hirer; or

(ii) begins working for the hirer pursuant to being supplied by another employment business.

(8) For the purposes of regulation 10(3), the references to "the contract" and "the hire period referred to in paragraph (1)" shall be read as references to the notice referred to in sub-paragraph (7) and the hire period specified in that notice, respectively.

Savings in respect of existing contracts

3. – (1) During the transitional period, regulations 2(2) (non-disclosure of information), 4(5) (provision of written statement of fees), 9(9) (prohibition on detrimental treatment for termination of contract by work-seeker) and 9(10) (prohibition on making remuneration conditional on receipt of payment from hirer) of the 1976 Regulations shall remain in force in respect of any existing contract.

(2) During the transitional period, the Employment Agencies Act 1973 (Charging Fees to Workers) Regulations 1976(a) shall remain in force in respect of any existing contract.

Ongoing supplies and first occasion of supply

4. – (1) In regulation 7 (restriction on providing work-seekers in industrial disputes), 18 (information to be obtained from a hirer), 19 (confirmation to be obtained about a work-seeker), 20 (steps to be taken for the protection of the work-seeker and the hirer) and 22 (additional requirements in respect of professional qualifications or vulnerable persons), references to "supply" shall not include an ongoing supply.

(2) Regulations 9(6)(b) (notification of changes in terms agreed with workers) and 9(11) (prohibition on supplying workers to replace those in industrial dispute) of the 1976 Regulations shall remain in force after the date on which these Regulations come into force in respect of any ongoing supply.

(a) S.I. 1976 No. 714.

(3) Where the terms of an existing contract with a hirer are varied, the agency or employment business shall comply with the requirements of regulation 17 (requirement to obtain agreement to terms with hirers) before the first occasion on which it provides services to that hirer after the variation has been agreed.

Restriction on paying work-seeker's remuneration and client accounts

5. – (1) Regulation 8 (restriction on paying work-seeker's remuneration) shall not apply to agencies during the transitional period.

(2) In respect of any agency which, immediately before the day on which these Regulations come into force, was not required to maintain a client account by virtue of it having received no written request from a work-seeker under regulation 7(2) of the 1976 Regulations -

(i) regulation 25 shall not apply; and

(ii) regulation 7, and Schedule 1 to, the 1976 Regulations shall remain in force;

during the transitional period.

(3) Regulation 25 and Schedule 2 apply in respect of all relevant money held by an agency (other than an agency described in paragraph (2)) with effect from the day these Regulations come into force, but where -

(a) regulation 25 or Schedule 2 imposes a requirement on an agency to take action in respect of any money held by it within a certain period of time; and

(b) the event giving rise to the requirement to take that action occurred before the day these Regulations come into force;

that event shall be treated as having occurred on the day these Regulations come into force.

(4) Regulation 25 and Schedule 2 apply in respect of all relevant money held by an agency described in paragraph (2) with effect from the day after the day on which the transitional period ends, but where -

(a) regulation 25 or Schedule 2 imposes a requirement on an agency described in paragraph (2) to take action in respect of any money held by it within a certain period of time; and

(b) the event giving rise to the requirement to take that action occurred before the end of the transitional period;

that event shall be treated as having occurred on the first day after the end of the transitional period.

(5) In paragraphs (3) and (4) "relevant money" means money held by an agency immediately before the day on which these Regulations come into force or immediately before the day on which the transitional period ends (as appropriate) which, if the money had been received on or after that day, would be money in respect of which regulation 25 or Schedule 2 imposes a requirement to take action.

Miscellaneous Savings

6. – (1) Regulations 8 and 12 of the 1976 Regulations (records) shall remain in force in respect of any applications received before the date on which these Regulations come into force.

(2) Regulations 3(4), 6(1), 6(3), 6(5)(b), 7(3), 9(6)(c), 10(4), 11(1) and 11(5)(b) of the 1976 Regulations shall remain in force in respect of any copies of advertisements, written statements and documents required to be kept by an agency or employment business under those regulations.

(3) Where an agency has arranged employment for a young person before the date on which these Regulations come into force, any duty of the agency under regulation 5(4) of the 1976 Regulations (duty to loan return fare) shall be unaffected by the revocation of those Regulations.

(4) Where an employment business has supplied a worker to work at a place outside the United Kingdom before the date on which these Regulations come into force, any duty of the employment business under regulation 11(3) of the 1976 Regulations (duty to pay worker's return fare where hirer does not comply with his undertaking) shall be unaffected by the revocation of those regulations.

OPERATION OF CLIENT ACCOUNT**Interpretation**

1. In this Schedule unless the context otherwise requires—

the expressions “accounts”, “books”, “ledgers” and “records” shall include loose-leaf books and such cards or other permanent documents or records as are necessary for the operation of any system of book-keeping, electronic, mechanical or otherwise and where an electronic system is operated, the information recorded on it must be capable of being reproduced in legible form;

“accounting reference date” has the same meaning as it is given in section 224 of the Companies Act 1985(a);

“client” means any person for whom an agency acts and on whose account it holds, receives or pays out client’s money or a hirer from whom an agency receives a hirer’s deposit;

“client account” has the same meaning as in regulation 25;

“client’s money” means -

(a) money held or received by an agency on behalf of a work-seeker (including money held or received by way of advance against payment to a work-seeker for work to be done by that work-seeker, where the terms of the contract between the work-seeker and the hirer stipulate that the advance is not repayable to the hirer in any circumstances); and

(b) hirer’s deposits;

but shall not include money to which the only person entitled is the agency itself;

“credit institution” has the same meaning as in regulation 25;

“hirer’s deposit” has the same meaning as in regulation 25.

Maintenance of client accounts

2. – (1) An agency may keep one client account or as many such accounts as it thinks fit.

(2) Every client account must be in the name of the agency, and the name of the account must include -

(a) the word “client”; and

(b) if the account contains money belonging to a single client, the name of that client.

3. An agency may pay into a client account -

(a) 1985 c.6.

- (a) such money belonging to the agency as may be necessary for the purpose of opening or maintaining the account;
- (b) money to replace any sum which for any reason may have been drawn from the account in contravention of paragraph 7(2); and
- (c) money received by the agency which under paragraph 4(b) the agency is entitled to split but which the agency does not split.

4. An agency which holds or receives money which includes client's money -

- (a) may where practicable split such money and, if it does so, shall deal with each part thereof as if it had received a separate sum of money in respect of that part; or
- (b) shall, if it does not split the money, pay it into a client account no later than the end of the second business day following the day on which it receives the money.

5. An agency shall not pay into a client account any money other than money it is required or permitted by regulation 25(4) and 25(13) or this Schedule to pay into a client account, and an agency into whose client account any money has been paid in contravention of this paragraph shall, no later than the end of the second business day following the day on which it discovers the same, withdraw it and pay it to the person to whom it belongs.

6. An agency may withdraw from a client account -

(a) client's money properly required for -

- (i) a payment to the client;
- (ii) a payment to another person on the written request of the client provided that the agency has previously agreed with the client to make payment to that other person if the client so requests;

(b) client's money properly required -

- (i) for or towards reimbursement of money properly expended by the agency on behalf and at the written request of the client;
- (ii) for or towards payment of the agency's fees due from the client;
- (iii) for or towards reimbursement of monies paid by the agency to the client representing the client's remuneration from employment with a hirer, where the agency has paid such remuneration to the client prior to receiving the same from the hirer (or any person connected to the hirer);

where the client has agreed to such deduction in paper form or by electronic means and, in a case falling within sub-paragraph (b)(i) or (ii) the agency has delivered to the client an invoice or other written statement of the amount of the fee incurred or money expended;

- (c) money (not being client's money) to which paragraph 3(a) or 4(b) applies, to reimburse the person properly entitled to it;

(d) money which for any reason may have been paid into the account in contravention of paragraph 5, to rectify that contravention;

(e) client's money required by law to be deducted from a work-seeker's remuneration before such remuneration is paid to him;

provided that in any case under sub-paragraph (a) or (b) of this paragraph the money so drawn shall not exceed the total of the money held for the time being in such account on account of such client.

7. – (1) No money drawn from a client account under paragraph 6(b) (c) or (d) shall be drawn except by -

(a) a cheque or electronic transfer drawn in favour of the agency; or

(b) a transfer to an account at a credit institution in the name of the agency not being a client account.

(2) No money other than money permitted by paragraph 6 to be drawn from a client account shall be so drawn.

(3) A withdrawal from a client account may only be made by a person who is an authorised signatory in accordance with the current mandate held by the credit institution holding the account.

8. No sum shall be transferred from the ledger account of one client to that of another except -

(a) with the consent of the client to whom the sum belongs; or

(b) where a work-seeker becomes entitled, under the terms of any contract with a hirer, to receive any money paid to an agency by way of hirer's deposit.

Accounts and records

9. – (1) Every agency shall at all times keep properly written up such accounts as may be necessary—

(a) to show the agency's dealings with -

(i) client's money received, held or paid by it; and

(ii) any other money dealt with by it through a client account; and

(b) (i) to show separately in respect of each client all money of the categories specified in sub-paragraph (a) of this paragraph which is received, held or paid by it on account of that client; and

(ii) to distinguish all money of the said categories received, held or paid by it, from any other money received, held or paid by it; and

(c) to show the current balance of each client's account in the client's ledger or to enable this to be readily ascertained.

- (2) (a) All dealings referred to in sub-paragraph (1)(a) of this paragraph shall be appropriately recorded -
- (i) in a clients' cash account or a clients' column of a cash account; and
 - (ii) in a clients' ledger or a clients' column of a ledger;
- and no other dealings shall be recorded in such account, ledger, or, as the case may be, in such columns.
- (b) All dealings of the agency relating to its business as an agency other than those referred to in sub-paragraph (1) (a) of this paragraph shall be recorded in a separate cash account and ledger or such other columns of a cash account and ledger as the agency may maintain.
- (3) In addition to the books, ledgers and records referred to in sub-paragraph (2) of this paragraph, every agency shall keep a record of and copies of all invoices and of all statements under paragraph 6(b) (distinguishing between fees and disbursements) delivered or made by the agency to its clients.
- (4) Every agency shall, within 21 days of the end of each calendar month -
- (i) compare, as at the last day of the calendar month that has just ended, the total of the balances shown by the clients' ledger accounts of the liabilities to the clients, with the cash account balance; and
 - (ii) prepare a reconciliation statement showing the cause of the difference, if any, shown by the above comparison; and
 - (iii) reconcile the cash account balances with the balance shown on statements and passbooks of all client accounts, and money held elsewhere, showing the causes of any differences in the reconciliation; and
 - (iv) take appropriate action to rectify any differences.

Inspection and report

10. – (1) Every agency who at any time during an accounting period is required to keep accounts and records under paragraph 9 above shall, within ten months of the end of the accounting period, have them inspected and reported upon by an independent person who is a member of any of the bodies listed in section 249D(3) of the Companies Act 1985(a).

(2) The agency must ensure that the reporting accountant's rights and duties are set out in a letter of engagement incorporating the following terms -

“(i) In accordance with paragraph 10 of Schedule 2 to the Conduct of Employment Agencies and Employment Businesses Regulations 2002 (“the Conduct Regulations”), you are instructed to report to me/this firm/this company whether in your opinion the requirements of regulation 25 and Schedule 2 to the Conduct Regulations have been complied with or have been substantially complied with during the accounting period to which the report relates.

(a) 1985 c.6.

(ii) You may report that the said requirements have been substantially complied with if in your opinion they have been complied with except so far as concerns trivial breaches due to clerical errors or mistakes in book-keeping, all of which were rectified on discovery, and none of which in your opinion resulted in any loss to a person entitled to clients' money.

(iii) If you report that in your opinion the said requirements have not been complied with or substantially complied with, you must annex to your report a statement of the matters in respect of which, in your opinion, the said requirements have not been complied with or substantially complied with.

(iv) If you are unable to form an opinion as to whether or not the requirements have been complied with or substantially complied with, you must specify in your report the matters in respect of which you have been unable to satisfy yourself, and the reasons therefor.

(v) For the purpose of making your report under sub-paragraph (i) above, I/we/the company undertake to provide you with particulars of all accounts maintained or operated at any credit institution by me/this firm/the company, in the course of my/our/its business as an employment agency during the period to which the report relates.

(vi) Subject to paragraph (vii) below, you must examine my/this firm's/this company's accounts and records in order to enable you to verify whether they comply with the requirements of paragraph 9 of Schedule 2 to the Conduct Regulations, for which purpose you may request such further information and explanations as you may consider necessary, and I/we/the company undertake(s) to provide you with such information as you may request.

(vii) nothing in sub-paragraph (vi) above shall require you -

(a) to extend your enquiries beyond the information contained in the documents produced to you, supplemented by such information and explanation as you may obtain from me/us/the company;

(b) to consider whether the accounts and records have been properly kept in accordance with paragraph 9 of Schedule 2 to the Conduct Regulations at any time other than the during the period to which your report relates."

(3) An agency required to maintain a client account or client accounts in accordance with regulation 25 and this Schedule shall keep displayed at each of its premises used for or in connection with the carrying on of an employment agency in such a position that it can be readily seen by persons resorting to those premises a copy (certified as a true copy by the reporting accountant) of the reporting accountant's most recent report, but not any statement annexed to it in accordance with paragraph (2)(iii) above.

Accounting period

11. – (1) The accounting period shall, for the purpose of paragraph 10 of this Schedule and regulation 25, be determined in accordance with the following provisions of this paragraph.

(2) The first accounting period of an agency shall be -

(a) in the case of an agency which has a client account or accounts established before the date on which these Regulations come into force, the period beginning with the day immediately following that date, and ending on a date not more than twelve months after that date or if the agency is incorporated under the Companies Act 1985, the agency's accounting reference date whichever is the sooner;

(b) in the case of an agency which establishes a client account or accounts on or after the date on which these Regulations come into force, the period beginning with the date upon which the first such client account is established and ending with a date not more than twelve months from that date or if the agency is incorporated under the Companies Act 1985, the agency's accounting reference date whichever is the sooner.

(3) Subject to paragraph (4), subsequent accounting periods shall begin with the day immediately following the end of the agency's previous accounting period and end with a date not less than six months and not more than twelve months after that date.

(4) In the event that the only client account maintained by an agency is closed on a date less than six months following the end of the agency's previous accounting period, the accounting period in question shall end on the date upon which such client account is closed.

Preservation of client account records

12. – (1) Every agency required to maintain a client account or client accounts in accordance with regulation 25 and this Schedule shall preserve -

(a) all accounts, books, ledgers and records for at least six years from the date of the last entry therein;

(b) copies of all invoices and statements under paragraph 6(b) above as issued to clients, for at least six years from the date of such issue;

(c) all statements as printed and issued by the credit institution with which the relevant client account is held, for at least six years from the date of receipt of each statement by the agency;

(d) the records of all reconciliations required by paragraph 9 above, in each case for at least six years from the date upon which such reconciliation is produced;

(e) all reports made to it by an accountant under paragraph 10 above, in each case for at least six years from the date upon which such report is delivered to the agency.

(2) The records referred to in this paragraph may be kept either at the agency's relevant business premises or elsewhere, provided that if they are kept elsewhere, the agency shall ensure that they are readily accessible by it and that it is reasonably practicable for any person employed by the agency at any of its relevant business premises to arrange for them to be delivered to the relevant business premises at which that person is employed.

(3) The records referred to in this paragraph may be kept in electronic form, provided that the information so recorded is capable of being reproduced in legible form.

(4) If no hard copy is kept of any information contained in a record kept in an electronic system, that information must be capable on reasonable notice of being reproduced in printed form.

Interest

13. Where an agency holds money relating to a single client in a client account, the agency must account to the client for any interest earned on any sum that is held on behalf of the client for more than 10 days.

SCHEDULE 3

Regulation 26

OCCUPATIONS IN RESPECT OF WHICH EMPLOYMENT AGENCIES MAY CHARGE FEES TO WORK-SEEKERS

Actor, musician, singer, dancer, or other performer;

Composer, writer, artist, director, production manager, lighting cameraman, camera operator, make up artist, film editor, action arranger or co-ordinator, stunt arranger, costume or production designer, recording engineer, property master, film continuity person, sound mixer, photographer, stage manager, producer, choreographer, theatre designer;

Photographic or fashion model;

Professional sports person.

SCHEDULE 4

Regulation 29

PARTICULARS TO BE INCLUDED IN AN AGENCY'S OR AN EMPLOYMENT BUSINESS'S RECORDS RELATING TO WORK-SEEKERS

1. Date application received.
2. Work-seeker's name, address and, if under 22, date of birth.
3. Any terms which apply or will apply between the agency or employment business and the work-seeker, and any document recording any variation thereto.
4. Details of the work-seeker's training, experience, qualifications, and any authorisation to undertake particular work (and copies of any documentary evidence of the same obtained by the agency or employment business).
5. Details of any requirements specified by the work-seeker in relation to taking up employment.
6. Names of hirers to whom the work-seeker is introduced or supplied.
7. Details of any resulting engagement and date from which it takes effect.
8. Copy of any contract between the work-seeker and any hirer entered into by the agency on the work-seeker's behalf.
9. Date application withdrawn or contract terminated (where applicable).
10. In the case of an agency that is permitted to charge fees to work-seekers, dates of requests by the agency for fees from the work-seeker and of receipt of such fees, with copy statements or invoices, numbers and amounts; or, as appropriate, statements of dates and amounts of sums deducted from money received by the agency on the work-seeker's behalf in accordance with regulation 25(5), to the extent that these are not required to be comprised in records maintained in respect of a client account in accordance with paragraph 12 of Schedule 2.
11. Details of enquiries made under regulations 19, 20 and 22 about the work-seeker and the position concerned with copies of all relevant documents and dates they were received or sent as the case may be.

SCHEDULE 5

Regulation 29

PARTICULARS TO BE INCLUDED IN AN AGENCY'S OR AN EMPLOYMENT BUSINESS'S RECORDS RELATING TO HIRERS

1. Date application received.
2. Hirer's name and address, and location of employment if different.
3. Details of the position(s) the hirer seeks to fill.
4. Duration or likely duration of work.
5. Experience, training, ability, qualifications, and authorisation required by hirer, by law, or by any professional body; and any other conditions attaching to the position(s) the hirer seeks to fill.
6. The terms offered in respect of the position(s) the hirer seeks to fill.
7. Copy of the terms between agency or employment business and hirer, and any document recording any variation thereto.
8. Names of work-seekers introduced or supplied.
9. Details of enquiries under regulations 18 and 20 about the hirer and the position the hirer seeks to fill, with copies of all relevant documents and dates of their receipt.
10. Details of each resulting engagement and date from which it takes effect.
11. Dates of requests by the agency or employment business for fees or other payment from the hirer and of receipt of such fees or other payments, and copies of statements or invoices.

SCHEDULE 6

Regulation 29

PARTICULARS TO BE INCLUDED IN AN AGENCY'S OR EMPLOYMENT BUSINESS'S RECORDS RELATING TO DEALINGS WITH OTHER AGENCIES OR EMPLOYMENT BUSINESSES

1. Names of any other agencies or employment businesses whose services the agency or employment business uses, and details of enquiries (and the answers thereto) under regulation 23(1)(a) as to that agency or employment business's suitability, with copies of all relevant documents and dates the enquiries were made and the answers received.
2. Date and copy of any agreement under regulation 23(1)(b).

Draft Regulations laid before Parliament under section 12(5) of the Employment Agencies Act 1973, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2002 No.

EMPLOYMENT AGENCIES, ETC.

The Conduct of Employment Agencies and Employment Businesses Regulations 2002