

dti

**GUIDANCE ON THE CONDUCT
OF EMPLOYMENT AGENCIES
AND EMPLOYMENT BUSINESSES
REGULATIONS 2003**

IN ASSOCIATION WITH





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GUIDANCE ON THE CONDUCT OF EMPLOYMENT AGENCIES AND EMPLOYMENT BUSINESSES REGULATIONS 2003

The Conduct of Employment Agencies and Employment Businesses Regulations 2003 (the Regulations) govern the conduct of the private recruitment industry and establish a framework of minimum standards that clients, both work-seekers and hirers, are entitled to expect.

In addition to the Conduct Regulations, employment agencies and employment businesses and their staff should be aware of and comply with other relevant legislation, statutory codes and official guidance relating to, for example, equal opportunities, equal pay, health and safety, immigration, national minimum wage, working time and trade union membership.

In particular, the Government expects employment agencies and employment businesses, and hirers, to follow high standards as regards equality of opportunity. It is unlawful to refuse to hire or to treat a work-seeker less fairly - e.g. in pay or conditions - because of their race or nationality, sex, sexual orientation, religion, beliefs or disability (noting that reasonable adjustments must be considered for disability). The Sex Discrimination Act 1975, the Race Relations Act 1976, the Disability Discrimination Act 1995, the Employment Equality (Sexual Orientation) Regulations 2003 and the Employment Equality (Religion or Belief) Regulations 2003, apply to employment agencies, employment businesses and hirers.

PART I GENERAL AND INTERPRETATION

Regulation 1: – Citation and Commencement

Except for regulations 26(7) and 32 the Regulations will come into force on 6th April 2004. To facilitate the implementation of the Regulations, regulation 4 and Schedule 1 provide for a three month transitional period, starting from 6th April 2004 and ending on 5th July 2004. Regulations 26(7) and 32 will come into force on 6th July 2004.

Regulation 2 : – Interpretation

Regulation 2 defines the terms used in the Regulation.

Many of the definitions given in regulation 2 need no further explanation, but where additional explanation is required, this is set out below:

Advertisement

The term “advertisement” covers all forms of advertising. This will include advertising on the Internet, advertising boards in agencies’ and employment businesses’ shop-fronts, sales promotion leaflets and flyers, advertisements in all forms of media including printed publications, poster advertisements, radio and television advertisements. This definition should therefore be read in conjunction with regulation 27, which deals with the rules on advertising for employment agencies and employment businesses and section 13(4) of the Employment Agencies Act 1973.

Employment Agency and Employment Business

The meaning of the terms “employment agency” and “employment business” are defined in the Employment Agencies Act 1973 as amended by the Employment Relations Act 1999. The amendments made by the 1999 Act will apart from the changes to section 13(2) of the Employment Agencies Act 1973, come into force on 6th April 2004. The amendments to section 13(2) will come into force on 6th July 2004. See Annex for details of the amendments.

Employment Agency

Broadly speaking an employment agency introduces work-seekers to client employers for direct employment by those employers. This is usually known in the industry as “permanent recruitment” or employment even though the employment may only be for a fixed period.

Employment Business

An employment business engages work-seekers under either contracts for services or contracts of employment and supplies those work-seekers to client hirers for temporary assignments or contracts where they will be under the hirers’ supervision or control. This is usually known in the industry as the “supply of temporary workers”. A company engaged in both “permanent recruitment” and “the supply of temporary workers” will fall into the definition of both employment agency and employment business to reflect both sides of the business. Where this Guidance uses the terms “direct employment” or “permanent recruitment” it refers to the operation of an employment agency. Where the Guidance refers to the “supply of temporary workers” it is referring to the operation of an employment business.

Hirer

The word “hirer” is defined in the Regulation as meaning the person (including firms and corporate bodies) to whom temporary workers are supplied or to whom candidates are introduced for direct employment.

Work Finding Services

These are the services provided by the agency and employment business to individuals either looking for permanent work or temporary work in order to help them find that work, and include:

- the services it is providing to a candidate looking for permanent employment;

- circumstances where it provides temporary work opportunities to temporary workers who it employs under contracts of employment (contracts of service); and
- circumstances where it provides temporary work opportunities to temporary workers who it engages under contracts for services.

Work-seeker

This term refers to persons looking for both permanent and temporary work and includes not only individual work-seekers but also limited company contractors (including composite and umbrella companies) who have not opted out of the Regulations. Under this definition a work-seeker is not only a person that an employment agency or employment business provides work-finding services to, but also a person to whom it holds itself out to as being capable of providing such services. In other words both those actually working through the agency or employment business and those who may do so in the future.

This does not however mean that where the agency or employment business receives large numbers of speculative CVs that it cannot use, it is required to issue contracts to those persons or keep records in respect of them (see notes to regulation 29 (Record Keeping)). The requirement to issue contracts and keep records only arises once the agency or employment business starts taking active steps towards placing a work-seeker in work.

Regulation 3: - The meaning of “connected”

This regulation establishes the circumstances in which one person is connected with another.

A person for the purposes of this definition could mean an individual, firm or corporate body.

A person will be connected to another person who is his/her spouse, minor child or stepchild, his/her employer, employee or business partner. A person (A) will also be connected to a person which is a company, (B), if A is a director or other officer of B. A will also be connected to any company (C) which is in turn connected to B. C and B will be connected if the same person is a director or other officer of both or has control of both or if C is a subsidiary or holding company of B. A will also be connected to a director, other officer or employee of such a subsidiary or holding company. Furthermore, if a person is connected with a trustee of a trust, s/he will also be connected with the beneficiary of that trust and any other trustees.

The significance of this definition is seen primarily in the workings of regulation 8, which prohibits the payment of workers by an employment agency. Regulation 8 brings this prohibition into effect by providing that an employment agency may not pay or make arrangements to pay the work-seeker it has introduced to a hirer or refer the hirer to a person

connected to the employment agency with a view to that person paying the work-seeker. In other words if an employment agency makes an introduction to a hirer, the hirer must take responsibility for payment to that work-seeker.

Regulation 4: - Transitional and Saving Provisions and revocation

This regulation revokes the Conduct of Employment Agencies and Employment Businesses Regulations 1976 and both the Charging Fees to Workers Regulations 1976 and the Charging Fees to Au Pairs Regulations 1981. Schedule 1 to the Regulation provides for a three month transitional period from the 6th April 2004 to 5th July 2004 in respect of those regulations which come into force on 6th April 2004.

PART II GENERAL OBLIGATIONS

Regulation 5: – Restriction on agencies and employment businesses requiring work-seekers to use additional services

Some employment agencies and employment businesses not only look for work for their work-seekers but also provide additional services such as CV writing, photographic services, training or the provision of personal protective equipment. In many cases these additional services are provided at a charge to the work-seeker. The prohibition in the Employment Agencies Act 1973 against charging work-seekers fees for finding them work does not prevent employment agencies and employment businesses from charging fees for these ancillary services. However, regulation 5 prevents employment agencies and employment businesses, or any person connected to it, from making the provision of work-finding services to work-seekers (including limited company contractors and persons supplied through limited company contractors (regulation 32 (2)), where those limited company contractors together with the person to be supplied, have not given notice to opt out of the Regulations (regulation 32(9)), conditional on those work-seekers using any of the ancillary services that the agency or employment business may charge for.

Please see the notes on Schedule 1 for the transitional provisions relating to regulation 5.

Regulation 6: – Restriction on detrimental action relating to work-seekers working elsewhere

Regulation 6(1) prevents employment agencies and employment businesses from taking any detrimental action or including restrictive terms in work-seekers' contracts, which prevent them from either:

- (a) i) terminating their contract with the employment agency or business;

- ii) working for others such as the client directly or through a competing employment business; or
- (b) which require the work-seeker to notify them, or any person connected with them, of the identity of any future employer.

It is important to remember, when applying regulation 6(1)(a)(ii), that the term “work-seeker” includes limited company contractors and persons supplied through limited company contractors that have not given notice to opt out of the Regulations. This is as a result of the provisions of regulation 32(3), which specifically extends the definition of work-seeker to limited company contractors (which have not opted out of the Regulations) in these circumstances. Therefore the agency or employment business may not restrict either the person supplied by a limited company, or the limited company itself from terminating the contract with it and taking up work with a person other than it or the limited company itself.

Neither can an agency or employment business, under regulation 6(1), subject, or threaten to subject, a work-seeker that has lawfully terminated any contract with it, or given notice to do so to a detriment. An example of a detriment would be withholding payment or deducting a proportion of the hourly rate for any period already worked.

Please see the notes on Schedule 1 for the transitional provisions relating to regulation 6.

Regulation 6(2) clarifies those acts, which will not constitute a detriment.

Regulation 6(2)(a) provides that if having terminated a contract, the temporary worker consequently loses benefits that s/he would otherwise have been entitled to under that contract, the loss of those benefits will not be classed as a detriment under regulation 6(1).

Regulation 6(2)(b) provides that if an employment agency or business suffers loss as a result of a work-seeker terminating a contract and not carrying out work s/he agreed to carry out, the employment agency or business is entitled to seek to recover that loss from the work-seeker and that its actions in doing so would not constitute a detriment under regulation 6(1).

Under regulation 6(2)(c), the agency or employment business is also not prevented from including a requirement in the work-seeker’s contract that the work-seeker should give a period of reasonable notice to terminate the contract.

Regulation 6(3) provides that regulation 6(1) and (2) do not apply in circumstances where an employment business is acting as the actual employer in law of the temporary worker. However, the requirement for a contract with an agency or employment business for the work-seeker to give reasonable notice applies to all work-seekers. In other words if the

employment business were actually employing the temporary workers under contracts of employment (as opposed to contracts for services), it is entitled to act as an employer in every sense.

Regulation 7: – Restriction on providing work-seekers in industrial disputes

Regulation 7(1) provides that an employment business may not supply a temporary worker to a hirer to replace an individual taking part in an official strike or any other official industrial dispute. In addition, an employment business must not introduce or supply a work-seeker to do the work of someone who has been transferred by the hirer to perform the duties of the person on strike or taking industrial action. An employment business will have a legal defence to having acted in breach of this regulation if it does not know, or has no reasonable grounds for knowing, that official strike action is in progress.

Regulation 7(2) provides that this regulation applies to official strike action only. In other words it does not apply to unofficial strike action.

Regulation 8: – Restrictions on paying work-seekers' remuneration

Regulation 8 is designed to prevent agencies from directly or indirectly paying work-seekers on behalf of the hirer to whom the work-seeker has been introduced. Regulation 8(1) provides that an employment agency (as opposed to an employment business), which has provided a hirer with a work-seeker, may not pay or make arrangements to pay that work-seeker either directly or via any person connected with it. The purpose of this regulation is to prohibit employment agencies supplying temporary workers.

This used to be particularly popular when supplying temporary workers to hirers who could not reclaim their VAT such as hospitals, schools and in some cases individuals (such as the supply of temporary care workers into people's own homes) and the financial sector. In these cases it was common for an employment agency to introduce the work-seeker to the hirer on a temporary basis so that the work-seeker had a contract directly with the hirer rather than the employment agency. The employment agency would nevertheless settle the payroll on behalf of the hirer. The work-seeker's services did not, therefore, form part of the employment agency's service to the hirer. Therefore, when the employment agency charged the hirer, it only charged VAT on its margin, thereby significantly reducing its VAT charge to hirers who could not reclaim it. The Government however disliked this route because it was unclear from the work-seeker's point of view which party was responsible in law for paying him/her and for other employer related obligations.

Regulation 8 therefore seeks to ensure that, where a recruitment company is supplying temporary workers, it only ever supplies those temporary workers as an employment business. In other words *it* must

engage the work-seekers that it supplies to hirers for temporary assignments either under a contract of employment or a contract for services. It will also be responsible for their pay and any statutory benefits such as holiday pay. It will therefore be the workers' principal employer and the services of the worker will form part of its service to the hirer. VAT will be chargeable on the full amount of its charges to the hirer i.e. the salary element as well as its margin and employer's National Insurance contributions.

However, this regulation does not apply to:

- agencies supplying workers for occupations in the entertainment or modeling sectors, which are listed in Schedule 3;
- agencies and hirers connected with one another (as defined in regulation 3) e.g. in-house employment businesses;

NB: As a consequence of the provisions of the Care Standards Act 2000 and the Domiciliary Care Agencies Regulations 2002 employment businesses (who are registered with the National Care Standards Commission) supplying care workers into private homes are now exempt under VAT legislation from the requirement to charge VAT on their invoices. For further details on this point please contact your local Customs and Excise office or the Recruitment and Employment Confederation for its guidance on Care Standards.

Regulation 9: – Restriction on agencies and employment businesses purporting to act on a different basis

Regulation 9(1) and (2) provides that neither an employment agency nor an employment business, shall, when introducing or supplying a work-seeker to a hirer, claim to be acting as an employment agency to the work-seeker and at the same time acting as an employment business to the hirer or vice versa. In other words this regulation prevents firms from claiming to be operating on one basis to the work-seeker, while advising the hirer that they are operating on another basis. This provision will not prevent the employment agency or employment business from operating as both an agency and an employment business in respect of either a hirer or work-seeker, i.e. looking for permanent candidates and supplying temporary workers at the same time for the same client or offering temporary work to a work-seeker, while at the same time looking for suitable permanent positions for them. However, it should provide them with terms in respect of each and set out the capacity in which it is acting very clearly in relation to the services being provided.

Regulation 10: – Restriction on charges to hirers

The purpose of regulation 10 is to ensure that employment businesses do not use transfer fees unreasonably as a means of discouraging or

detering hirers from offering permanent work to temporary workers, having those workers supplied through a different employment business, or introducing them to a third party to be employed by that party. Nevertheless this regulation should allow employment businesses to protect their legitimate business interests.

Regulation 10 is complex, but can be summarised as applying differently in 3 distinct scenarios; first where there has been an introduction to a client/ hirer but no supply; secondly where there has been a supply and the fee is in relation to temp-to-perm or temp-to-temp engagements following such supply; and thirdly temp-to-third party fees where there has been a supply to a client and the client has introduced the work-seeker to a third party. Temp-to-third party fees where there has been no supply are not covered by this regulation and fees in this regard can be charged without restriction.

The expressions “temp-to-perm”, “temp-to-temp” and “temp-to-third-party” are not used in the Regulations but are the terms commonly used to describe the following situations:

“Temp-to-Perm”: where a temporary worker supplied by an employment business either transfers or is subsequently taken on directly by the hirer to whom s/he has been supplied. The words do not mean that employment by the hirer must be permanent but simply that the worker has a direct contractual relationship with the hirer.

“Temp-to-Temp”: where the worker is supplied to the same hirer by a different employment business. This frequently happens where the client puts the work out to tender and requires workers currently supplied by one employment business to transfer to the books of another employment business whose tender was accepted.

“Temp-to-Third Party”: where a client/hirer introduces workers to another person who employs the worker directly. This may be an individual employer, a subsidiary or parent company or even another employment business.

Situations where there has been an introduction of a temporary worker but no supply

Regulation 10(1) and (2) provide, where there has been no supply, that any term in a contract between an employment business and a hirer in which it is seeking to charge a transfer fee in a temp-to-perm or temp-to-temp situation will be unenforceable, unless that contract also contains a term giving the hirer the option, instead of paying a fee, to choose to have that worker supplied by it for a specified extended period of hire at the end of which s/he will transfer without charge.

There is no limit on the agreed period of hire referred to here or the level of the transfer fee. These are matters that will need to be agreed in the contract between the employment business and the hirer at the outset of their business relationship. However where the hirer has opted for an extended period of hire, the employment business must supply the worker for the entirety of that period, on the terms specified in the contract between it and the hirer (see regulation 10(1)(a)), unless the employment business is prevented from supplying that worker in circumstances where it is not at fault (regulation 10(3)). Where there has been no supply, the transfer fee is often referred to as an introduction fee.

Situations where there has been a supply and there is an engagement of the temporary worker directly by the client or through another employment business (temp-to-perm & temp-to-temp):

Where there has been a supply, the position is broadly similar except that additional restrictions apply, see regulations 10(4), (5) and (6).

An employment business, where there has been a supply, can charge, and therefore set out in its agreement the method for calculating, a transfer fee in temp-to-perm and temp-to-temp situations provided:

- the hirer is given the option to have the worker supplied for a specified extended period of hire, at the end of which the worker will transfer without charge instead of paying the transfer fee. Where the hirer has opted for an extended period of hire, the employment business must supply the worker for the entirety of that period, (unless it is prevented from so doing in circumstances where it is not at fault (regulation 10(3)) on terms no less favourable to the hirer than those which applied between the employment business and the hirer before it received notice that the hirer wished to opt for the extended hire period - regulation 10(1)(b); and
- the transfer takes place within either 14 weeks of the start of the first assignment or within 8 weeks of the end of any assignment, whichever period ends later. The 14-week period is measured from the start of the first assignment with the hirer. Where there has been more than one assignment the rules are more complex. Care must be taken in calculating the correct start date for the purposes of determining the 14-week period. Where there has been a break of more than 42 days (6 weeks) between assignments this will break continuity for the purpose of calculating the start of the 14-week period and the later assignment will be taken as the first assignment. Where there has been a break of 42 days or less this will not trigger the start of a new 14 week period,

For example

A is the Worker

B is the Employment Business: and

C is the Hirer

A is supplied by B to C on 1 January for 4 weeks until 28 January, then supplied again by B to C on 3 April for 4 weeks and finally supplied by B to C for the last 2 weeks of May ending on 31 May. The start of the first 14-week period is 1 January. The break, or period of no supply between 29 January and 3 April is more than 42 days (6 weeks) and therefore 3 April is the start of another 14-week period. The relevant period in the above example is the later of 14 weeks starting on 3 April and 8 weeks starting 1 June (the day after the day on which the work-seeker last worked for the hirer).

Situations where there has been a supply and there is an engagement of the temporary worker by a third party to whom the client has introduced them (temp-to-third party)

Where there has been a supply the position is different because although the additional restrictions of regulation 10(4), (5) & (6) apply there is no requirement to offer the client a choice between the transfer fee and an extended period of hire, see regulation 10(1).

An employment business, where there has been a supply, can charge a transfer fee, and therefore must set out in its agreement the method for calculating a transfer fee in temp-to-third party situations provided the transfer takes place within, either 14 weeks of the start of the first assignment, or within 8 weeks of the end of any assignment, whichever period ends later. If there has been more than one assignment, care must be taken in determining the start of the 14- week period (see above).

Regulation 10(7) makes it unlawful to seek to enforce any contractual term, which is unenforceable under the provisions of the regulation, or otherwise directly or indirectly request a payment in these situations. In the event of money being paid by a hirer in respect of an unenforceable term, regulation 31 provides that the hirer is entitled to recover that money.

These provisions govern the charging of the transfer fee and not the method of calculating such fee. Therefore it will still be permissible to calculate the transfer fee based on the expected duration of the hirer's subsequent engagement of the worker and to increase the transfer fee in circumstances where the hirer extends the subsequent engagement beyond the period originally envisaged.

Please see the notes on Schedule 1 for the transitional provisions relating to regulation 10.

Regulation 11 – Entering into a contract on behalf of a client

This regulation, whilst it applies to all employment agencies and employment businesses, is mainly relevant to those operating in the entertainment and modelling sectors.

All employment businesses are prohibited from both entering into a contract with a hirer on behalf of a worker and vice versa entering into a contact with a worker on behalf of a hirer.

Employment agencies are similarly prohibited except where the provisions of regulation 11(3) are complied with and these are that:

- the agency has been appointed by and has the authority of the party it is acting as agent for, so to act; and
- where the agency is acting as agent for work-seekers and it is permitted under regulation 26(1) to charge a fee for finding them work (these are mainly performers, models and professional sports persons).

Regulation 11(4) and (5) requires that agencies ensure that the terms of the contract be notified to the parties as soon as practicable but no later than the end of the fifth business day following the day on which the agency entered into the contract.

Regulation 11(6) provides that an agency may not act as agent for both the hirer and the work-seeker simultaneously.

Regulation 12 – Prohibition on employment businesses withholding payment to work-seekers on certain grounds

Regulation 12 provides that an employment business must not withhold or threaten to withhold the whole or part of any payment to a temporary work-seeker in respect of any work s/he has done on the basis that:

(a) the employment business has not received payment from the hirer;

(b) the work-seeker has not produced a signed timesheet confirming that s/he has worked during a particular period of time. In practice, if a hirer will not sign a timesheet verifying the number of hours a temporary worker claims to have worked, the employment business cannot leave the matter there and refuse to pay the temporary work-seeker because s/he could not produce a signed timesheet. However, the employment business is not prevented from reasonably delaying payment (for a relatively short time) while it makes reasonable inquiries to verify the hours the temporary work-seeker did work. For example by contacting the hirer, interviewing co-workers or checking on site attendance

registers or other records. It may be that the hirer is refusing to sign a timesheet because the work done was below the standard required and so the hirer does not want to pay for it. This will not justify the employment business withholding the work-seekers' pay. Obviously this is a contractual matter between the employment business and the hirer and one, which cannot be resolved by withholding payment from the work-seeker. The important point is that the employment business must pay the work-seeker for work done. This regulation is not intended to have the effect of forcing the employment business to pay a work-seeker for any hours claimed if that work-seeker has not actually worked those hours. This regulation does not prohibit the use of timesheets or other documents used to verify hours worked.

(c) the work-seeker has not worked during any period in addition to the period s/he is claiming payment for. (For example it used to be common to find clauses in a temporary work-seeker's contract, which stated that if s/he was late for an assignment or did not work a full week, a stated amount would be deducted from his/her hourly rate for every hour s/he did work. Under this regulation, however, it will be unlawful to insert a term into a temporary work-seeker's contract which provides that, if s/he does not work for a specified number of hours per week, the employment business will either pay the work-seeker at a lower rate for work done or refuse payment altogether); or

(d) any matter which is within the employment business' control. (An example of such a matter would be the proper administration of the payroll.) This does not mean that if the employment business makes an administrative error with its payroll, it will automatically be in breach of regulation 12(d). Rather it means that, if having made such an error, the employment business does not correct it and make payment to the temporary work-seeker, by whatever means, within a reasonable amount of time of the expected pay date i.e. within a few days, the employment business will be in breach of regulation 12(d).

Please see the notes on Schedule 1 for the transitional provisions relating to regulation 12.

PART III: REQUIREMENTS TO BE SATISFIED BEFORE SERVICES ARE PROVIDED

Regulation 13 – Notification of charges and the terms of offers

Regulations 13(1) and 13(2) require that before providing or arranging the provision of any services to a work-seeker for the first time, an employment business or employment agency must notify the work-seeker which of its services it may charge a fee for.

Under section 6(1) of the Employment Agencies Act 1973 employment agencies and employment businesses are prohibited from charging work-seekers for finding them work. Regulation 26 provides that agencies in the entertainment and modelling sectors are able to charge a fee for work-finding services. However, section 6(1) does not prohibit an agency or employment business from charging for other services, such as CV writing. Therefore, if the agency or employment business is providing the work-seeker with more than one service, it must inform him/her which services are work-finding services for which it is not allowed to charge and which are the ancillary services that it is allowed to and does charge for.

If an agency or employment business provides services which may be charged for, such as CV writing/portfolio preparation, training, photographic services etc., it must inform work-seekers of the amount of or method of calculation of any fee for those services, the identity of the person to whom it is payable, a description of the services and whether any refunds are payable and how those refunds operate.

Under regulation 13(3), if there is a change to the fees for the services offered or the goods provided, the work-seeker should be given further notice detailing the introduction or variation in any fees which subsequently become payable.

Regulation 13(4) provides that where an employment agency or employment business offers any gift or makes an offer of any benefit to a work-seeker, as an inducement for him/her to use its services, it must make clear the terms and conditions on which the gift or benefit is offered, before the offer is open for acceptance by the work-seeker.

Regulation 14 – Requirement to obtain agreement to terms with work-seekers

Regulation 14(1)(a) and (b) require that before an employment agency or employment business provides any work finding services to a work-seeker, it must agree with the work-seeker the terms which will apply between it and the work-seeker, including:

- (a) whether it operates as an employment agency i.e. looking for suitable positions for “permanent” or direct employment with other employers or as an employment business i.e. looking for temporary assignments for temporary workers;
- (b) the type of work which will be sought on his/her behalf; and
- (c) if it is acting as an employment business (i.e. supplying the services of temporary workers/contractors) it must set out the terms for the work-seeker that are referred to in regulation 15 (see notes on regulation 15 below) and if it is acting as an employment agency (introducing work-seekers for direct employment by hirers – “permanent employment”) it must set out the terms for the work-seeker that are referred to in regulation 16 (see notes on regulation 16 below). The

requirement for employment agencies to set out terms under regulation 16 will only apply to entertainment and modeling agencies since, in the wider recruitment industry, employment agencies do not enter into contracts with work-seekers looking for direct employment with hirers (“permanent employment”).

Regulation 14(2) provides that an employment agency or employment business must ensure that all terms which will apply between it and a work-seeker are put in writing in a single document as far as this is possible. If it is not possible to put all the terms into a single document, the agency or employment business may record them in more than one document provided that all documents relating to the terms between it and a work-seeker are given to him/her at the same time.

Regulation 14(3) states that the provisions of Regulation 14(2) do not apply to an employment business which actually employs the temporary work-seekers it supplies under contracts of employment (as distinct from a contract for services) in accordance with Part I of the Employment Rights Act 1996.

Regulation 14(4) provides that the agency or employment business may not vary the terms it has agreed with the work-seeker and set out in a document, unless the work-seeker agrees to the variation. As a matter of good practice, employment agencies and businesses should ensure that a work-seeker’s consent to a variation in terms is obtained in writing.

Regulation 14(5) provides that if an employment agency or employment business, and the work-seeker agree to any variation in the terms already set out in a contract or statement of terms, such as variations to the pay rate or the type of work, it must as soon as practicable, but at least before the end of the fifth business day following the day on which it and the work-seeker agreed to the variation, provide the work-seeker with another document containing full details of the new terms which have been varied, including the date from when they take effect. In this context, the requirement to provide documentary confirmation of the new terms is a requirement to issue such confirmation and does not stipulate the time by which the work-seeker must have received it. Similarly, there is no requirement to reissue the first document as a consequence of making the amendment(s).

Regulation 14(6) provides that an employment agency or employment business must not make the continued provision of any services to a work-seeker conditional on the work-seeker agreeing to any variation in the terms e.g. a change in the pay rate.

Regulation 14(7) provides that the other provisions of regulation 14 do not apply in the case of an employment agency, where the only service provided by it to the work-seeker concerned is the provision of information to him/her in the form of a publication. This relieves

employment agencies, which are solely publishers of information about vacancies, such as on line job boards, from having to fulfil any of the requirements of this regulation.

Regulation 15 – Content of terms with work-seekers: Employment businesses

Regulation 15 provides that an employment business must include in its agreement with work-seekers the following terms:

- (a) whether those work-seekers are or will be employed by it under a contract of service (i.e. a contract of employment), or apprenticeship, or a contract for services, and the terms of employment or engagement that will apply;
- (b) an undertaking that it will pay the work-seeker for all work done regardless of whether it is paid by the hirer;
- (c) the length of notice which the work-seeker is required to give and entitled to receive, to terminate any contract (if the work-seeker is an employee, notice must be not less than statutory minimum period);
- (d) either the rate of pay payable to the work-seeker, or the minimum rate of pay, which it reasonably expects to achieve for the work-seeker;
- (e) details of the intervals at which remuneration will be paid i.e. weekly/monthly;
- (f) the amount of paid holiday that will be given. The majority of work-seekers will be covered by the Working Time Regulations and, therefore, will be entitled to 4 weeks' holiday pay. Regulation 32(4) requires an agency or employment business, in a contract with a limited company contractor together with the worker to be supplied, which has not given it notice, to opt out of the regulation (where annual leave provisions would not apply), to detail any period of absence that a limited company contractor may be entitled to and to be paid for. It may be that there are no such periods, but if there are, details must be included here.

Regulation 16 – Content of terms with work-seekers: Agencies

This regulation applies to agencies providing work finding services to performers, models and professional sports persons and others as set out in Schedule 3.

This regulation provides that an agency which is permitted to charge a work-seeker a fee for finding him/her work must include in its terms with that work-seeker:

- (a) full details of the work finding services, in other words how the agency goes about finding work for the work-seeker and what is expected of the agency in order for that function to be discharged properly and efficiently;
- (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

- 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 (i.e. work found, exploitation of rights, residuals.);
 - (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 none is 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 deducted;

(e&f) Where notice is required, the terms should include a statement giving the length of that notice, which the work-seeker is to give and is entitled to receive to terminate the contract between the work-seeker and the agency.

Regulation 17 – Requirement to obtain agreement to terms with hirers

Regulation 17(1) provides that before the first time an agency or employment business provides services to a hirer, other than the provision of information in the form of a publication, it must agree with the hirer the terms and conditions which apply or will apply between them, including:

- (a) a statement as to whether the services provided will be those of an employment agency or employment business i.e. introducing candidates for direct employment with employers or supplying temporary workers;
- (b) details of any fee which may be payable to the agency or employment business by the hirer including:
 - (i) the amount of the fee or its method of calculation; 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 none is payable, that fact must be stated in the terms;
- (c) the procedure to be followed if an employment business supplies a work-seeker to a hirer proves unsatisfactory. An employment business will normally have a provision in its terms with the hirer setting out how and within what time limits the hirer should notify the employment business, if a temporary worker supplied is not satisfactory and what the employment business will do as a consequence i.e. terminate the worker's assignment, seek to rectify the problem or supply an alternative

- (d) an employment agency should provide details of its authority, if any, to act for the hirer, including whether, and if so upon which terms it is authorised to enter into contracts with work-seekers on behalf of the hirer. E.g. whether it extends to advertising the position and by what medium.

Under regulation 17(2), an employment agency or employment business must ensure that all of the terms between it and the hirer are recorded in a single document and that a copy is provided to the hirer as soon as is practicable. In practice all the terms between the agency or the employment business and the hirer should be recorded, when instructions are given. The document will take the form of a set of terms of business or a letter setting out all the terms agreed.

Under regulation 17(3), if an employment agency or employment business, and the hirer agree any changes to the terms, the agency or employment business must, as soon as reasonably practicable after the changes have been agreed, give the hirer a new document setting out details of the changes and stating the date that the varied terms take effect.

PART IV

REQUIREMENTS TO BE SATISFIED BEFORE A WORK-SEEKER IS INTRODUCED OR SUPPLIED TO A HIRER

Regulation 18 – Information to be obtained from a hirer

Regulation 18 provides that employment agencies and employment businesses must not introduce or supply a work-seeker to a hirer unless it has sufficient information from the hirer to select a suitable work-seeker for the position the hirer seeks to fill. The following information should be obtained:-

- (a) the identity of the hirer and, if applicable, the nature of the hirer's business. This would involve clarifying which company in a group of companies is the hirer or verifying the identity of an individual employer;
- (b) the date on which the hirer wants a work-seeker to start work and the duration or likely duration of the work;
- (c) the position, including the type of work the work-seeker would be required to do, the location at which and the hours s/he would be required to work and any risks to health and safety known to the hirer and the steps that have been taken by the hirer to prevent or control such risks. This is an important health and safety point and careful note should be taken of it. Essentially under this regulation an agency or employment business must ensure that the hirer has carried out a thorough risk assessment of its site, equipment and working conditions so that sufficient information can be given to the work-seeker before s/he is either supplied or

- introduced to the hirer; in practice it would be advisable to obtain a copy of the risk assessment carried out by the hirer.
- (d) the experience, training, qualifications and any authorisation which the hirer considers are necessary, or which the worker needs to have by law or by the requirements of any professional body in order to carry out the work. By virtue of the provisions of regulation 32(5), this requirement also extends to those persons supplied through limited company contractors where those limited company contractors have not given the agency or employment business notice to opt out of the Regulations;
 - (e) any expenses payable by or to the work-seeker – and this will include not only expenses payable once the work-seeker starts work but also any expenses incurred in attending interviews prior to work commencing. It also includes expenses payable by the work-seekers, e.g. where they are required to pay for a mandatory Criminal Records Bureau check; and
 - (f) in the case of any employment agency:
 - (i) the minimum rate of pay and any other benefits offered by the hirer and the intervals at which they would be paid; and, where applicable,
 - (ii) the length of notice which a work-seeker would be required to give and entitled to receive, to end the employment with the hirer.

Regulation 19 – Confirmation to be obtained about a work-seeker

Provides that an employment agency or employment business must not introduce or supply a work-seeker to a hirer unless it has obtained confirmation:

- (a) of the identity of the work-seeker. This will mean seeing any document which provides evidence of the work-seeker's identity, such as his/her passport, driving licence, birth certificate. By virtue of regulation 32(6) this will extend to those persons provided through limited company contractors, where the notice under regulation 32(9) to opt out of the scope of the Regulations has not been given;
- (b) that the work-seeker has the experience, training, qualifications and any authorisation which the hirer considers are necessary, or which the worker needs to have by law or by the requirements of any professional body, in order to carry out the work. This obligation can be properly discharged by the agency or employment business when registering a work-seeker. During the registration process it should request sight of evidence of training received, qualifications and authorisations such as certificates, and registrations with professional bodies. Again by virtue of the provisions of regulation 32(6), the requirements here must be extended to those persons supplied through limited company contractors, which have not given notice to opt out of the Regulations; and
- (c) that the work-seeker is willing to work in this position.

Regulation 20 – Steps to be taken for the protection of the work-seeker and the hirer

Regulation 20(1) provides that an employment agency or employment business is not allowed to introduce or supply a work-seeker to a hirer unless it has made checks to ensure that the work-seeker and the hirer are each aware of any legal or professional body requirements which either of them have to satisfy to enable the work-seeker to work for the hirer. It will, of course, mean that the agency or employment business must be aware of any requirement in relation to particular types of work or job descriptions and presupposes a good working knowledge of the sector it is operating in. Evidence of the checks carried out should be retained, such as, for example, written confirmation from both the hirer and the work-seeker that they are aware of the legal or professional requirements that must be satisfied before the work in question is carried out. Regulation 32(7) extends these obligations to those persons supplied through limited company contractors where the limited company contractor and the person to be supplied have not opted out of the Regulations.

Regulation 20(1)(b) extends this requirement by placing an obligation on the employment agency or employment business to ensure that it would not be detrimental to the interests of either party (hirer or work-seeker) for the placement to go ahead. This is more than a health and safety issue and could cover matters such as a reasonable suspicion that the company was in severe financial difficulties or was engaged in immoral or illegal practices.

Regulation 20(2) provides that if an employment business receives or obtains information which gives it reasonable grounds (i.e. a realistic degree of certainty) to believe that a work-seeker is unsuitable for the position s/he has been supplied to a hirer for, it must inform the hirer of the information it has and end the supply of that temporary work-seeker without delay. So, for example, if a temporary teacher is supplied into a school and during the course of that supply the employment business receives information about that teacher, through a reference or other reliable report, which shows s/he is not suitable to work with children, the employment business must tell the hirer and remove the teacher from the assignment without delay. **(Note:** “without delay” is defined as “the same day, or where that is not reasonably practicable, on the next business day” (Regulation 20(7))

Regulation 20(3) provides that if an employment business receives or obtains information which indicates or suggests that the work-seeker may be unsuitable for the position it has supplied him/her to carry out, but the information does not give sufficient certainty to enable the employment business to rely on it without further investigation, it must immediately

inform the hirer that the worker may be unsuitable and start investigating the matter further, as far as the employment business is reasonably able to. The employment business must keep the hirer informed of the enquiries it is making and has made and of any further information obtained on the matter.

Regulation 20(4) provides that, if as a result of such enquiries under regulation 20(3), the original suggestion that the work-seeker may be unsuitable becomes a reasonable belief that the work-seeker is in fact unsuitable, the employment business must inform the hirer and terminate the assignment without delay.

Regulation 20(5) and (6) provide that where an employment agency receives or obtains information within 3 months of an introduction of a work-seeker to a hirer for direct employment by that hirer, and that information indicates that the work-seeker either is or may be unsuitable for the position s/he is now employed in by the hirer, it must inform the hirer of the information. An employment agency has no obligation to inform a hirer if such information comes to light after three months from the date the worker was introduced. The Regulations do not define an introduction but for the proper operation of this regulation, it is advisable to treat the date on which the work-seeker actually becomes employed or engaged by the hirer as the date from which the three month period should be measured. There may be occasions when an introduction has been made under the employment agency terms of business with that hirer some considerable time prior to the date on which the work-seeker actually becomes employed by that hirer. It would obviously defeat the purpose of this regulation, if an agency failed to disclose information, which showed or suggested a work-seeker was unsuitable, because it had introduced him/her more than three months previously. In many cases the work-seeker would have worked out a long notice period with his/her previous employer and, therefore, would have either not yet started work for the hirer or had been working for the hirer for less than three months.

Regulation 32(7) extends the obligations under regulation 20 to limited company contractors and those persons supplied through limited company contractors unless the limited company contractor and the person to be supplied has given notice to opt-out of the Regulations.

Regulation 21 – Provision of information to work-seekers and hirers

Regulation 21(1)(a) provides that when an employment agency or employment business proposes a work-seeker to a hirer it must give the hirer all the information it has obtained about the work-seeker under the requirements of regulation 19. (Namely the work-seeker's identity, experience, training, qualifications and authorisations required and that the work-seeker is willing to do the work in question.) If it is acting as an employment business it must also make clear to the hirer the contractual basis upon which it has engaged the work-seeker i.e. whether the

agency or employment business has engaged the work-seeker under a contract for services or employed them under a contract of employment (contract of service) or apprenticeship.

Under regulation 21(1)(b), when an agency or employment business offers a work-seeker a position with a hirer, it must give the work-seeker the information about the hirer it has obtained under the requirements of regulation 18. If it is acting as an employment business and has not previously agreed the actual rate of pay with the work-seeker, for the position in question, in accordance with regulation 15(d)(i), it must do so at this stage.

Under regulation 21(2) the information referred to above must be confirmed in written or electronic form as soon as possible or in any event no later than the end of the third business day after the hirer/the work-seeker was first given the information orally. It is important to note that the requirement is to confirm the information in writing to the relevant party and not necessarily a requirement to ensure that the work-seeker/hirer has received it. It would be advisable, therefore, to retain a record that the information has been sent to demonstrate that the obligations under this regulation have been discharged. This may include the retention of fax confirmation, certificates of posting or copies of emails showing the date on which they were sent.

However, regulation 21(3) states that regulation 21(1) does not apply (unless the work-seeker or hirer requests otherwise) where an agency or employment business intends to introduce or supply a work-seeker to a hirer to work in the same position with that hirer as s/he has worked within the previous five business days and where the information, which would need to be given, is the same as that already given (other than the start date of the work and the likely duration of it (regulation 18(b)).

Regulation 22 – Additional requirements where professional qualifications are required or where work-seekers are to work with vulnerable persons

Regulation 22(1) and (2) provides that before an agency or employment business supplies or introduces a work-seeker to a hirer, it must ensure that:

- (a) where that work-seeker is required by law or any professional body to have qualifications or authorisation to work in the position in question; and
- (b&c) where the work-seeker will be taking up a position which involves working with or caring for any person(s) under the age of eighteen, the elderly, infirm or anyone in need of care and attention;

in addition to having satisfied the requirements in regulations 18 – 21, the agency or employment business has, in accordance with regulation 22(2), also obtained:

- (a) copies of any relevant qualifications or authorisations that the work-seeker needs to work in the position in question and offered copies of these to the hirer;
- (b) two references from persons not related to the work-seeker, where those persons have agreed that the agency or employment business can disclose their references to the hirer, and it has offered to provide copies of the references in question to the hirer; and
- (c) confirmation that the work-seeker is not unsuitable to work with vulnerable persons. The agency or employment business is obliged to take reasonably practicable steps to obtain such confirmation.

Under regulation 22(3), if it has not been possible to comply fully or at all with the above requirements despite having taken all reasonably practicable steps to do so, the agency or employment business must then inform the hirer that it has not been able to comply fully. The agency or employment business must then inform the hirer of the steps it has taken in order to comply.

Note: Agencies or employment businesses which arrange for the employment of nannies or child care within the family home should refer to any guidance issued by the Department for Education and Skills relating to child care within the home.

The provisions of regulation 22 extend to limited company contractors and those persons supplied through limited company contractors by virtue of regulation 32(7) unless the limited company contractor and the person to be supplied have given notice to opt-out of the Regulations.

It should be noted that the ability of limited liability contractors to opt out of the provisions of the Regulations provided under regulation 32(9) does not apply where the limited liability contractor, or the worker to be supplied by them, is required to work with vulnerable persons - regulation 32(12).

In this regulation “relative” is regarded as having the meaning as given in section 63 of the Family Law Act 1996.

PART V SPECIAL SITUATIONS

Regulation 23 – Situations where more than one agency or employment business is involved

Regulation 23 deals with the situation where there is more than one employment agency or employment business involved in providing work-finding services.

Regulation 23(1)(a) and (b) require that where the introduction or supply of work-seekers is organised through more than one employment agency or employment business, the first employment agency or employment business must make enquiries and receive satisfactory answers to ascertain that the second employment agency or employment business, and any subsequent ones are suitable to act in that capacity. In addition, the first and second (and any subsequent) employment agency or employment business must agree in what capacity each of them will act, namely whether as an employment agency or an employment business.

Regulation 23(1)(c) relates specifically to those employment agencies supplying persons in the occupations specified in Schedule 3, e.g. performers, models and professional sports persons, who agencies are permitted to charge for providing work-finding services) and provides, at regulation 23(1)(c)(i), that where the first agent is acting as an agency in relation to the work-seeker, it must ensure 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 itself, rather than to the second agent. Or, under regulation 23(1)(c)(ii)(aa), where the first and the second agent have agreed that the second agent may receive any payment due to the work-seeker, the first and the second agency must have agreed that the second agency will pass the monies to the first agency or to the work-seeker within 10 days of the second agency having received it. Provided that there is no legal provision preventing it, the agencies should agree that the work-seeker may enforce the agreement that the second agent should pay any monies due. These agreements between the first and second agent must be recorded either on paper or electronically.

Under regulation 23(2), the first employment agency or employment business cannot assign or sub-contract any of its obligations under any contract or arrangement with a work-seeker or hirer to another employment agency or employment business, unless (1) it has obtained the prior consent of the work-seeker or the hirer for whom it acts. (2) that a copy of the terms, which it has assigned or sub-contracted its obligations, are recorded in a single document and (3) a copy of that document is provided to either the work-seeker or the hirer for whom it acts.

In the entertainment sector, it is not uncommon for this arrangement (commonly termed 'spilt deals') to involve more than two agents. In this case, the same principles apply in that the first employment agency in the chain takes primary responsibility for the work-seeker and written agreements between all parties establish the chain for monies owed and the work-finding fee to be paid.

Regulation 24 - Situations where work-seekers are provided with travel or required to live away from home

Regulation 24(1) provides that an employment agency or employment business must not arrange employment for an au pair where s/he is to be required to repay the hirer or agency/employment business the fare for the journey (from his/her home to the hirer's home or from the hirer's home to his/her home) out of money payable to him/her either by the hirer or by the agency or employment business. The agency or employment business may, therefore, require that an au pair pays his/her own return fare from his/her home to his/her place of employment with the hirer but it cannot require that the cost of the fare comes out of his/her pay.

Under regulation 24(2) an employment agency or employment business must not arrange work for a work-seeker (except in situations where they are given a contract of employment by the hirer) if, in order to take up that work s/he must live away from home, unless it has taken all reasonable steps to ensure that (in accordance with regulation 24(3):

- (a) suitable accommodation will be available for him/her before s/he starts work; and
- (b) the work-seeker has been informed of details of the accommodation including any cost to him/her; and suitable arrangements have been made for him/her to travel to such accommodation.

Please note that by virtue of the provisions of regulation 32(8) references to the work-seeker in regulation 24(2), (3), (4), (5), (7) and (8) must, in the case of limited company contractors which have not opted out of the Regulations, be read as references to the person who would be supplied by the work-seeker to carry out the work in question.

Regulation 24(4) provides that, in circumstances where the work-seeker is not the employee of the hirer (i.e. the work-seeker is a temporary worker supplied by an employment business or is being introduced by an employment agency to do a modelling or entertainment job); or the work-seeker is under 18 years of age, and, in either situations, the employment agency, the employment business or the hirer, has arranged free travel or payment of the work-seeker's fares for the journey to work, the agency or employment business must, if the work does not start or when it finishes either;

- (a) arrange free travel for the return journey; or
- (b) pay the work-seeker's return fare; or
- (c) obtain an undertaking from the hirer that s/he will arrange free return travel or pay the return fare.

In these circumstances an agency or employment business must give notice to the work-seeker setting out the details of the free travel or payment of fares including any conditions on which these arrangements are offered.

Regulation 24(5) provides that if a hirer does not comply with its undertaking to arrange free return travel or pay the return fare, the

agency or employment business must either arrange free travel for the return journey of the work-seeker or alternatively pay his/her fare.

Under regulation 24(6), where a work-seeker is seeking employment as an au pair or in private domestic service, the agency or employment business must ensure that the work-seeker is provided with such information as s/he may reasonably request in order to decide whether to take up the position.

Regulation 24(7) and (8) require that the agency or employment business must not introduce or supply a work-seeker who is under the age of eighteen for a position where s/he is required to live away from home, unless it has obtained direct consent from a parent or guardian to do so. Regulation 24(11) provides that this provision will not apply to any person under 18 to whom section 25 of the Children & Young Persons Act 1933 or section 42 of the Children and Young Persons Act 1963 applies i.e. the need to obtain a licence for a child under the age of 18 going abroad to perform for profit.

Under regulation 24(9), if a work-seeker takes up a position on the basis that he/she is loaned money, either by the hirer or the employment agency or employment business, to meet his/her travel or other expenses to take up the position, , the work-seeker cannot be required to repay a sum greater than the sum loaned. This will prohibit the agency or employment business or the hirer from charging interest on such a loan. Where such sums are to be loaned, regulation 24(10) requires that the agency or employment business provides the work-seeker with full details of the repayment terms of the loan in writing unless, in the case of a loan from a hirer, it is not aware of the details.

The term “work-seeker” in this regulation also refers, by virtue of the provisions of regulation 32(7), to limited company contractors and persons supplied through limited company contractors to carry out the work in question unless the limited company contractor has given notice to opt out of the Regulations.

24(12) defines an au pair for the purposes of this regulation. The definition is consistent with that used for immigration purposes.

PART VI CLIENT ACCOUNTS AND CHARGES TO WORK- SEEKERS

Regulation 25 – Client accounts

The only circumstance where employment agencies may request or directly or indirectly receive money from the hirer on behalf of a work-seeker is where the money is owed directly by the hirer to the work-seeker and consists of the work-seeker’s earnings from employment in the entertainment or modelling industries. In such circumstances the money must be held by the agency for the work-seeker in one or more

client accounts (i.e. current or deposit accounts at a bank or building society that the agency operates in order to hold clients' money) in accordance with Schedule 2 of these Regulations. (Regulation 25(2 & 3)).

Whilst in the non-entertainment sector, the hirer is usually the client, in the entertainment sector the artist is the client and the hirer is the party engaging the services of the work-seeker.

An agency will receive money on behalf of a work-seeker if either it, or any person connected with it, receives money directly or indirectly from a hirer or any person connected with the hirer in accordance with the terms of any contract between the work-seeker and the hirer.

Employment businesses may never request or directly or indirectly receive money on behalf of a work-seeker in any circumstances.

Under regulation 25(3), if an employment agency receives money on behalf of a work-seeker and acts in contravention of the provisions of regulation 25(2) and of Schedule 2 the agency must, by the end of the second business day after the day the money is received, either:

- pay the money or an equivalent sum to the work-seeker on whose behalf it has been received;
- pay the money to an agency which is able to comply with this regulation; or
- repay it to the person from whom it was received.

Under regulation 25(4) all money received by an agency on behalf of a work-seeker must be paid into a client account by the end of the second business day after the day it is received. The only exceptions to this are the following:

- (a) cash paid to the work-seeker by the end of the second business day after the day the money is received by the agency or any person connected to it;
- (a) cheques and banker's drafts, made out to or drawn in the work-seeker's name; and
- (c) money dealt with in accordance with regulation 25(3).

Regulation 25(5) provides that all cheques and banker's drafts drawn in the work-seeker's name must be sent to him/her by the end of the second business day after the day on which the agency receives them.

When a payment is made to a work-seeker in accordance with regulation 25, regulation 25(6) provides that the agency must issue a statement setting out:

- (a) when, and from whom, the monies were received;
- (b) the work to which the payment relates; and
- (c) any fees or deductions made by the agency.

An agency within the entertainment or modelling sectors is permitted to deduct a fee from monies payable to the work-seeker, provided the work-seeker has agreed to such a deduction in his contract with the agency. Except for agreed fees and any sum required by law to be deducted, the agency must not make any deductions from monies payable to the work-seeker. (Regulation 25(7) & (8)).

An agency, which receives money on behalf a work-seeker, which it is required to place on client account, holds that money as trustee for the work-seeker and must not hold it any longer than 10 days from beginning of the day it was received unless the work-seeker has previously requested a longer period. (Regulation 25(9)).

If a work-seeker at any time requests payment to him/herself, or to another person, of some or all the money held on his/her behalf, the agency must pay the amount requested by the end of the second business day after the day on which the request was made. (Regulation 25 (10)).

If an agency holds money on behalf of a work-seeker for more than thirty days from the day it was received, it must, by the end of the thirty second day, provide the work-seeker with a statement setting out the amount held as at the close of business on the thirtieth day. The agency must continue to provide statements at intervals of not more than thirty days until the entire sum held has been paid to the work-seeker. (Regulation 25(11))

Where money received by an agency on behalf of a work-seeker is paid by cheque made out to the agency, the periods of 10 and 30 days respectively referred to under regulation 25(9) and (11) above, start with the day on which the cheque clears (Regulation 25(12)).

In addition, all invoices issued by the agency for work done by the work-seeker must state that if payment is to be made by cheque or banker's draft the cheque or banker's draft must be made out to, or drawn in favour of, the agency's client account (Regulation 25(13)).

If an agency receives a hirer's deposit (i.e. an advance against monies to be paid to the work-seeker for work to be done by him/her and which may be repayable to the hirer), it must, by the end of the second business day after it is received, be paid into a client account without deduction. (Regulation 25(14)).

Under regulation 25(15) an agency must not request or be in either direct or indirect receipt of a hirer's deposit unless it is money that the agency is entitled to request or directly or indirectly receive on behalf of the work-seeker (i.e. it is money paid in respect of work to be done by the work-seeker and the agency has one or more client accounts lawfully maintained in accordance with Schedule 2 to these Regulations.)

Regulation 25(16) provides that, if an agency receives a hirer's deposit that it is not entitled to receive, it must by the end of the second business day after the money was received pay it, or an equivalent amount, to an agency which is capable of lawfully receiving the money or repay it to the person from whom it was received.

Regulation 25(17) provides that if an agency receives a hirer's deposit it pays it into a client account and holds it as trustee for the hirer until the money either becomes payable to the work-seeker or to the hirer under the terms of any contract between the hirer and the work-seeker.

Regulation 25(18) provides that where a work-seeker becomes entitled under the terms of his/her contract with the hirer to any money paid to the agency as a hirer's deposit, the agency receives that money on behalf of the work-seeker and will be treated as having received it on the day it becomes payable to the work-seeker.

Regulation 26 – Circumstances in which fees may be charged to work-seekers

The circumstances, where an employment agency may charge a work-seeker a fee, is limited to cases where the work-seeker is seeking employment in any of the occupations listed in Schedule 3, namely jobs within the entertainment, modelling sectors etc. (Regulation 26(1)) However, the agency cannot charge a fee to a particular work-seeker where it, or any person with whom it is connected, also makes a charge to the hirer who is engaging that work-seeker. (Regulation 26(3))

If an agency charges such a fee to a work-seeker it must be payable out of that work-seeker's earnings for work done that the agency has found for him/her. (Regulation 26(2)) Nevertheless, there are special provisions where the work-finding services include the production of a publication. (See note on Regulation 26(5)).

Note: In the entertainment sector fee-charging arrangements can include a commission on renewals on engagements and residuals as a result of work arranged by the agent.

In any case where the agency and the hirer are connected, the provisions of Regulation 26 will not apply unless the agency informs the work-seeker of this fact, before providing the service for which the fee is to be charged. (Regulation 26(4)).

Under certain circumstances an agency is permitted to charge a fee to a work-seeker for including information about him/her in any publication, which is designed either to find the work-seeker work in any of the various occupations listed in Schedule 3 or to provide hirers with information about work-seekers looking for work in those occupations. Regulation 26(5)

Such a fee may only be charged where:

- (i) the publication is the only work-finding service provided by the agency, or
- (ii) the fee charged to the work-seeker is no more than an estimate of the cost of producing and circulating the publication arising from the inclusion of the work-seeker's details in the publication.

Furthermore, the agency must make available to the work-seeker a copy of a current edition of that publication, before it enters into a contract with the work-seeker. (Regulation 26(5))

Note: Co-operative agents in the entertainment sector will often require a stakeholder donation from work-seekers when they join the agency. This donation allows the work-seeker a stake in the co-operative and is returnable if the work-seeker leaves the agency. As such this donation is exempt from the provisions of Regulation 26(2) because it is not a fee for work-finding services and, therefore, such a payment can be requested before any work is found.

There are no restrictions on charging fees to work-seekers for the purchase of or subscription to a paper based publication which contains information about employers only provided that this is the only work-finding service the agency offers to the work-seeker and a copy of the current edition has been made available to the work-seeker before s/he has purchased or subscribed to it. (Regulation 26(6))

However, if the publication is in electronic form, the work-seeker must be given access to a current edition of it. (Regulation 26(5&6))

Limited company contractors

Regulation 32(1)(a) provides that any reference in the Regulations to the term work-seeker includes a work-seeker which is a company. Therefore the exemption in regulation 26(1) and 26(7) to the restrictions on charging fees to work-seekers in section 6(1)(a) of the Employment Agencies Act 1973 includes limited company contractors. In other words an agency can charge a limited company contractor operating in any sector a fee for finding them work. However, these exemptions in regulation 26(1) and (7) will not apply where the agency, or any person connected with it, charges a fee to the hirer in respect of the service of supplying that work-seeker to him regulation 26(3)

Please see the notes on Schedule 1 for the transitional provisions relating to regulation 26.

PART VII MISCELLANEOUS

Regulation 27 – Advertisements

Regulation 27(1) requires that in every advertisement an employment agency or employment business makes the full name of the employment agency or business clear, either orally or in writing (depending on the media used) and whether it is acting as an employment agency or employment business.

Regulation 27(2) provides that the agency or employment business must not place an advertisement, which includes details of positions unless it has :

- (a) information about all the specific positions included in the advertisement; and
- (b) the authority of the hirer concerned to find work-seekers for each position advertised.

Regulation 27(3) provides that, where an agency or employment business refers to rates of pay in an advertisement, it must also state the nature of the work, its location and the minimum experience, training and qualifications which the work-seeker needs to have in order to receive those rates of pay.

Regulation 28 - Confidentiality

Under regulation 28(1) an employment agency or employment business must not disclose any information about a work-seeker without his/her prior consent unless it is a) to provide work-finding services for that work-seeker; 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, the provision of information to that professional body. The only exceptions to this would be where the agency or employment business is allowed under provisions of the Employment Agencies Act, these Regulations or any other piece of legislation dealing with the disclosure of information such as, the Data Protection Act 1998, to disclose confidential information about a work-seeker.

Regulation 28(2) provides that an employment agency must not disclose information relating to a work-seeker to any current employer without the prior consent of the work-seeker. If the work-seeker gives consent and then withdraws it, the agency or employment business cannot consider itself to have the work-seeker's prior consent. In addition, it may not make the provision of its services to that work-seeker conditional upon him/her either giving his/her consent or agreeing not to withdraw it once it has been given.

The provisions of regulation 28 must be applied to those persons supplied through limited company contractors by virtue of the provisions of regulation 32(7) unless the limited company contractor and the worker to be supplied have both given notice to opt-out of the Regulation.

Please see the notes on Schedule 1 for the transitional provisions relating to regulation 28(2).

Regulation 29 - Records

Regulation 29(1) provides that an employment agency and employment business must keep records that are sufficient to show that it has complied with all the provisions of the Employment Agencies Act and these Regulations. This includes compliance with:

- (a) Schedule 4, which sets out the details that the agency or employment business, must include in its records relating to all work-seekers. However, it does not have to keep records on work-seekers that it takes no action on (see the notes to Regulation 29(3) below;
- (b) Schedule 5, which sets out the details the agency or employment business must include in its records relating to hirers; and
- (c) Schedule 6, which deals with the details the agency or employment business needs to record on other employment agencies and employment businesses when it is one of a number of employment agencies/employment businesses involved in the supply or introduction of work-seekers to hirers as provided for under Regulation 23 (see previous notes). These are in addition to other legislative obligations.

Under regulation 29(2), the records mentioned above must be kept for at least one year after their creation and in the case of the details recorded under Schedules 4 and 5, they must be retained for at least one year following the date that the agency or employment business last provided it services.

Under regulation 29(3), an agency or employment business is not required to keep details of a work-seeker if it takes no action in relation to finding work for that work-seeker. For example, if it receives a high volume of speculative CVs, which are not used, records need not be retained on the work-seekers to whom those CVs relate.

Under regulation 29(4), an agency or employment business may either keep records at the premises where it trades, or it may keep them elsewhere, provided that if it does so they are readily accessible and can be delivered to the trading premises to which they relate (i.e. the premises at which the work-seeker/hirer is registered or employed or premises from which it carries out business with any other employment agency or employment business (in the case of a regulation 23 arrangement). The records must be delivered by no later than the end of the second business day following the day on which a request for them is made.

Regulation 29(5) provides that the records can be kept in electronic form provided they are capable of being reproduced in a legible form. This would mean for example that the font size of the records kept must be capable of being read by the naked eye.

Regulation 29(6) relates to modelling and entertainment agencies and provides that client account records must be kept for a minimum of six years in accordance with the provisions of paragraph 12 of Schedule 2 of these Regulations.

Regulation 30 – Civil Liability

Regulation 30(1) provides that if an employment agency or employment business fails to comply with any of the provisions of either the Employment Agencies Act 1973 or these Regulations, which causes damage or loss to another person, that person can sue the agency or employment business for damages arising from for a breach of the Employment Agencies Act 1973 or these Regulations.

Regulation 30(2) makes it clear that the term “damage” in this regulation includes the death of, or injury to, any person (including any disease and any impairment of that person’s physical or mental condition).

The purpose of these provisions is to ensure that a person who suffers injury as a result of any breach of these Regulations can, whether or not they might otherwise have a claim, use these Regulations to take legal action against the agency or employment business.

It is also important to remember that a breach of these Regulations is also actionable by the Department of Trade and Industry (DTI) as a criminal offence and may be prosecuted by the DTI through the criminal courts.

Regulation 31 - Effect of prohibited or unenforceable term and recoverability of monies

Regulation 31(1) provides that where an employment agency’s or employment business’ contracts contain terms which are either prohibited or made unenforceable by these Regulations, the remainder of the contract may continue to bind the parties if the contract is capable of continuing in existence without the term i.e. it continues to make sense without that term.

Regulation 31(2) provides that where a hirer has paid any money to an employment business under a contractual term, which is unenforceable under regulation 10, that the hirer is entitled to recover the money.

Regulation 32 – Application of these Regulations to work-seekers, which are incorporated

Regulation 32(1)(a) provides that any reference to work-seeker in the Regulations includes a work-seeker that is a limited company. Regulations 32(2) to (8) provide clarification on how the regulations listed below apply and are modified in respect of work-seekers, which are limited companies. They require that where there is reference to the term work-seeker in any of the following regulations, it includes a reference to a limited company contractor and where appropriate the person who is, or would be, supplied.

The particular regulations affected by this regulation are:

- (a) Regulation 5 (Restriction on requiring work-seekers to use additional workers);
- (b) Regulation 6(1)(a) (Restriction on detrimental action relating to work-seekers working elsewhere – the regulation specifies the grounds for that detriment);
- (c) Regulation 15(f) (Content of terms with work-seekers: Employment businesses – details of entitlement to paid annual holidays);
- (d) Regulation 18(d) (Information to be obtained from a hirer – concerning the work-seeker’s experience, training, qualifications and any authorisation required by law or by any professional body);
- (e) Regulation 19(a) and (b) (Confirmation to be obtained about a work-seeker – identity of the work-seeker and that s/he has the necessary experience, training, qualifications and any authorisation);
- (f) Regulation 20 (Steps to be taken for the protection of the work-seeker and the hirer);
- (g) Regulation 22 (Additional requirements where professional qualifications are required or where work-seekers are to work with vulnerable persons);
- (h) Regulation 24(2), (3), (4), (5), (7), (8), (9) and (10) (Situations where work-seekers are provided with travel or required to live away from home);
- (i) Regulation 28 (Confidentiality); and
- (j) Schedule 4 (Particulars to be included in an Agency’s or Employment Business’s Records Relating to Hirers).

(Reference should be made to the notes for each of these provisions)

Regulation 32(9) provides that limited companies and those persons whose services they supply can choose not to be covered by the provisions of these Regulations. If they do exercise the choice not to be covered by the Regulations, then both the limited company and the worker to be supplied must give notice, to the employment agency or employment business that this is the case, before they are either introduced or supplied to a hirer.

Where the limited company contractor and the person supplied to do the work decide to exercise their right under regulation 32(9) to opt out of the

scope of the Regulations and they give the requisite notice to the agency or employment business, the opt out operates so as to remove the limited company contractor and the worker to be supplied entirely from the scope of the Regulations. The opt out is not selective, none of the provisions of the Regulations will apply where the opt out has been exercised.

Regulation 32(10) enables a person supplied to carry out the work by the work-seeker, which is a company, to be withdrawn by giving notice to the employment business or agency of the withdrawal.

Under regulation 32(11), a limited company contractor cannot give such notice part way through an assignment. Any notice given while working in a particular position will not be effective until after the limited company contractor/person working through the limited company contractor stops working in that position.

Under regulation 32(12), any person who is a limited company contractor, or is supplied by the limited company contractor to carry out work, and is attending any person either under 18 years of age or, by virtue of age, infirmity or any other circumstances, is in need of care/attention, may not opt out of these Regulations.

Regulation 32(13) provides that an employment agency or employment business may not make the provision of its work-finding services conditional upon either a limited company or the worker to be supplied giving notice to opt out of the Regulations.

Regulation 33 - Electronic Communications

Provides that throughout the Regulations, unless otherwise stated, any requirement to notify a person of any matter, to give or send a document, to provide a person with information or make enquiries and receive answers, can be discharged in writing either on paper or by electronic means. These provisions seek to ensure that agencies and employment businesses are able to choose the means of communication that best suit their business including transactions over the Internet or other networks. The obligation is to send the communication to the address provided by the intended recipient (hirer or work-seeker) for that purpose.

SCHEDULE 1 TRANSITIONAL AND SAVING PROVISIONS

This Schedule provides clarification on how the Regulation will apply to transactions that were in existence before these Regulations came into force.

Paragraph 1 – Interpretation

This paragraph sets out the definition of certain expressions used in this Schedule.

Existing Contracts

Means contracts entered into between an employment agency or employment business and either a work seeker or hirer before the date on which these Regulations come into force, i.e. 6th April 2004 for all contracts except those entered into with Limited Companies (regulations 26(7) and 32).

Ongoing supply

This means the supply of a temporary work-seeker to a hirer by an employment business, which was in progress at the date these Regulations came into force, and continues after that date.

Transfer fee

This means either a temp-to-perm fee or a temp-to-temp fee as defined in regulation 10(2). Temp-to-third party fees will only be permissible where charged within the relevant period. See guidance on regulation 10.

Transitional Period

This means the period of 3 months from the date these Regulations come into force from 6 April 2004 to 5 July 2004. There is no transitional period for regulations 26(7) and 32, which come into force on 6 July 2004.

Paragraph 2 – Application to existing contracts

The Regulation will apply to all existing contracts from the date they come into force with the following exceptions:

By virtue of paragraph 2(2) of Schedule 1 to these Regulations, the provisions of 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
- 28(2) prohibition on disclosure of information to current employer,

will not apply to existing contracts during the transitional period (6 April 2004 – 5 July 2004) to any contract between an agency or employment business and a work-seeker that was in existence before these Regulations came into force (i.e. on or before 5 April 2004).

Regulation 5

If the existing contracts an agency or employment business has with work-seekers allow it to make the provision of its work-finding services conditional upon the work-seeker using one or other of the services provided by the agency or employment business, for which there is a charge, it can continue to enforce such a term until 5 July 2004. However, after this date regulation 5 will apply to existing contracts in the same way as it applies to any contracts drawn up on or after the date on which these Regulations came into force.

Regulation 6(1)

If the existing contracts an agency or employment business has with work-seekers allow it to restrict or threaten to restrict them from taking up work with another person or requires them to disclose the identity of any future employer, it can continue to enforce such a provision for the first 3 months these Regulations are in force. After the end of that 3-month period however regulation 6(1) will apply to existing contracts in the same way as it applies to any contracts drawn up on or after the date on which these Regulations came into force and the agency or employment business may no longer place such restrictions on work-seekers.

Furthermore paragraphs 2(3) and (4) of Schedule 1 prevent an agency or employment business, after the end of the transitional period, from enforcing or seeking to enforce any contractual provision relating to restrictions on detrimental action and prohibitions on withholding payments to work-seekers which became actionable before 6 July 2004.

Regulation 10

Existing contracts between employment businesses and hirers, which include temp-to-perm and/or temp-to-temp fee clauses, where there is no facility in the contracts to offer an extension to the hire period and a free transfer at the end of it, as an alternative, are nevertheless enforceable until 5 July 2004. After 5 July 2004, regulation 10 will apply to existing contracts in the same way as it applies to any contracts drawn up on or after 6 April 2004, the date on which these Regulations come into force

Similarly temp-to-third party fee clauses contained within existing contracts are enforceable until 5 July 2004. In respect of temp-to-third party transfer fee clauses within new contracts or existing contracts from 6 July 2004, these will only be permissible where charged within the "relevant period". (See the guidance on regulation 10 above.)

However paragraph 2(5) of Schedule 1 to these Regulations provides that an employment business will continue to be entitled to pursue any fee that became due to it during the transitional period after that period has ended.

Furthermore under paragraphs 2(6), (7) and (8) of Schedule 1 where, following the end of the transitional period, an existing contract between an employment business and a hirer does not provide for an extension of the hire period as required under regulation 10(1) but, nevertheless, the employment business gives the hirer notice of an extension period as an alternative to a transfer fee before the work-seeker begins employment directly with the hirer, or through another employment business, the contract will be deemed to be operating in accordance with regulation 10(1) and the employment business will be entitled to charge a transfer fee in those circumstances or enforce the agreed extension of the hire period. It is important to note that because there is a requirement in regulation 17(2) for the terms that exist between an employment business and a hirer to be set down in a single document, there is a requirement for the contents of such a notice to be incorporated into a document with the rest of the terms between the employment business and the hirer at the earliest opportunity.

It is also important to note that from the end of the transitional period, i.e. from 6 July 2004, the provisions of regulation 10 will apply to all supplies of work-seekers including where the work-seeker is a limited company, provided such a worker seeker and the person being supplied has not opted out in accordance with Regulation 32.

Regulation 12

If an employment business' existing contracts with work-seekers allow it to make payment to a work-seeker conditional on receiving a signed timesheet or receiving payment from a hirer, it can continue to enforce such a provision during the transitional period. After the end of the transitional period, namely from 6 July 2004, regulation 12 will apply to existing contracts in the same way as it applies to any contracts drawn up on or after the date on which these Regulations come into force. It is then not only prohibited from making payment conditional on the circumstances set out in regulation 12, but also from enforcing or seeking to enforce such a provision that became actionable during the transitional period.

An employment business would, therefore, be required, under existing legislation, to pay work-seekers for work done without more than a reasonable delay for investigation if, for example, it had not received a signed timesheet in a particular case.

Regulation 26

During the transitional period an agency may continue to enforce its existing provisions relating to charging fees to work-seekers. But, after the end of that 3-month period, regulation 26 will apply to existing contracts in the same way as it applies to any contracts drawn up on or after the date on which these Regulations come into force.

Regulation 28(2)

During the transitional period, an agency will not be prevented from disclosing information about a work-seeker to his/her current employer, nor from making the provision of its services to that work-seeker conditional upon the work-seeker giving his/her consent for the agency to contact his/her current employer. After the end of the 3-month transitional period, however, regulation 28(2) will apply to existing contracts in the same way as it applies to any contracts drawn up on or after the date on which these Regulations came into force and the agency will be prohibited from contacting a current employer without the work-seeker's prior consent, or from making the provision of its services conditional upon that consent being given and not withdrawn.

Paragraph 3 - Savings in respect of existing contracts

During the three-month transitional period (6 April 2004 – 5 July 2004) the following provisions of the Conduct of Employment Agencies and Employment Businesses Regulations 1976 (the 1976 Regulations) will remain in force in respect of any existing contract:

(a) regulation 2(2) of the 1976 Regulations which provides that an agency shall not disclose information relating to workers and employers except in certain circumstances;

(b) regulation 4(5) of the 1976 Regulations which provides that an agency shall, before providing to a worker any other service for which the agency proposes to charge a fee, provide the worker with a written statement including certain specific details;

(c) regulation 9(9) of the 1976 Regulations which provides that an employment business shall not place any prohibition or restriction on a worker which is calculated to deter the worker from terminating his/her contract with the contractor and taking up direct employment with the hirer to whom he has been supplied;

(d) regulation 9(10) of the 1976 Regulations which provides that an employment business shall not make payment to a worker conditional on the receipt of payment from the hirer for the supply of that worker;

The Employment Agencies Act 1973 (Charging Fees to Workers) Regulations 1976 shall also remain in force in respect of any existing contract during the transitional period.

Paragraph 4 – Ongoing supplies and first occasion of supply

Under Paragraph 4(1) the following regulations only apply to the supply of work seekers by an employment business which starts after the Regulations come into force, and not to an “ongoing supply” which has started before the date these Regulations came into force and continues after this date:

- 7: Restriction on providing work-seekers in industrial disputes. For example if, before the Regulation comes into force, an employment business has started to supply a temporary worker in place of one of its client’s employees who has him/herself been transferred across by the client to replace a striking employee, it will not have to stop that supply when the Regulations become effective because that supply will be an ongoing supply. The employment business will, however, be prohibited from starting a new supply in the same circumstances after the Regulation comes into force. (Please note that the employment business has always been prohibited from supplying temporary workers to directly replace striking workers.)
- 18: Information which must be obtained from a hirer.
- 19: Confirmation which must be obtained about a work-seeker’s identity etc.
- 20: Steps to be taken for the protection of the work-seeker and the hirer.
- 22: Additional requirements in respect of professional qualifications or workers working with vulnerable persons.

Paragraph 4(2) provides that any “ongoing supply” will remain subject to the existing 1 regulation 9(6)(b) of the 1976 Regulations i.e. the requirement to give a worker a written statement incorporating any changes to terms and conditions of employment without delay; and 9(11) the prohibition on supplying workers to replace those in industrial disputes.

Paragraph 4(3) states that where the terms of an existing contract with a hirer are varied, the agency or employment business must, before it goes on to provide services to the hirer after the variation has been agreed, comply with the requirements of regulation 17 (i.e. to obtain agreement to such terms with the hirer).

Paragraph 5 – Restriction on paying work-seekers’ remuneration and client accounts

Regulation 8 – paragraph 5(1)

The prohibition on employment agencies paying temporary workers who have been supplied to a client on an agency basis shall not apply to agencies during the transitional period.

Regulation 25 and Schedule 2 – paragraph 5(2)

If, before the Regulations came into force, an agency did not receive a written request from a work-seeker under regulation 7(2) of the 1976 Regulations, requiring it to maintain a client account, it will remain governed by Regulation 7(2) of the 1976 Regulations during the transition period and the new Regulation 25 shall not apply until the end of that period.

Paragraph 5(3)

Excluding the circumstances described under paragraph 5(2) (see above) regulation 25 and Schedule 2 will apply to all relevant money held by an agency on the date the Regulations come into force. (For an explanation of the meaning of 'relevant money' see below). Where the Regulations impose a requirement on an agency in relation to how any relevant money received must be handled but give the agency a certain period of time to comply, the requirement will be deemed to have arisen on the date the Regulation came into force.

Paragraph 5(4)

Relevant money held by an agency, but which it received no written request from a work seeker to maintain a client account for (under 1976 regulation 7(2)) (see paragraph 5(2) above), will have to be dealt with in accordance with regulation 25 and Schedule 2 from the first day after the end of the transitional period.

The words “**relevant money**” mean money held by an agency immediately before the date these Regulations come into force or the day before the transitional period ends and which Regulation 25 or Schedule 2 requires an agency to take action over.

Paragraph 6 – Miscellaneous Savings

This states that the following provisions of the 1976 Regulations will remain in force if the event requiring action to be taken under the 1976 Regulations occurred before these (2003) Regulations come into force. These include the following:

- (1) regulations 8 & 12 of the 1976 Regulations relating to record keeping;
- (2) regulations 3(4), 6(1), 6(3), 6(5)(b), 7(3), 9(6)(c), 10(4), 11(1), 11(5)(b) of the 1976 Regulations relating to keeping of copies of

advertisements, written statements and documents, required to be kept under these Regulations;

- (3) regulation 5(4) of the 1976 Regulations relating to the duty to loan the return fare to a young person; and
- (4) regulation 11(3) of the 1976 Regulations relating to the duty to pay a worker's return fare if an employment business has supplied that worker to work outside the UK and the hirer fails to comply with an undertaking repay the worker his/her return fare itself.

SCHEDULE 2 CLIENT ACCOUNTS

This Schedule provides clarification on how the regulation relating to client accounts (Regulation 25) will apply.

Paragraph 1 – Interpretation

This paragraph sets out the definitions of certain expressions used in this Schedule.

Accounts, books, ledgers, records:

These terms will include any form of record, electronic, mechanical or otherwise, which is used as a system of bookkeeping. If the record is electronic, it must be possible to reproduce the information in a legible form.

Accounting reference date:

This has the same meaning as defined in section 224 of the Companies Act 1985.

Client:

This term means any person for whom the agency acts and has an account for, and that the agency uses this account to hold, receive or pay out that person's money. The term can also be used to refer to a hirer from whom the agency receives a deposit.

Client account:

This definition is provided in regulation 25.

Client's money:

This means money held or received by the agency on behalf of a work-seeker (including any monetary advance against payment for work to be done by the work-seeker, where the contract terms specify that the advance is not repayable to the hirer under any circumstances) and hirer's deposits.

However, the client's money, does not include money to which the agency is the only person entitled.

Credit institution:

This definition is provided in regulation 25.

Hirer's deposit:

This definition is provided in regulation 25.

Maintenance of client accounts

Paragraph 2

An agency can have one or as many client accounts, as it considers necessary. However, every client account must be in the name of the agency and its title must include the word 'client' and, if the account contains money for a single client, the name of that client.

Paragraph 3

The agency must pay into the client account any monies of the agency needed to open or maintain it, any money to replace that drawn from it in contravention of the provisions of this regulation (see paragraph 7) and any money that the agency is entitled to split but has not done so.

Paragraph 4

This provides that when money, including client's money, is received by an agency, the agency can, where practicable, split the money but each amount must be treated as if it were a separate sum; or, if the agent does not split the money, it must be paid into a client account no later than the end of the second business day following the day on which it is received.

Paragraph 5

The only money that an agency can pay into a client account is defined by regulation 25(4) and 25(14) or by this Schedule. If money is paid into the client account that does not meet these provisions, it must be withdrawn by the end of the second business day following the day on which this error has been discovered and must then be paid to the person to whom it belongs.

Paragraph 6

This paragraph sets out what money an agency can withdraw from a client account. This includes money required to pay the client and a payment to another person requested in writing by the client (provided that the agency and client have previously agreed that such payment will be made). Additionally, the paragraph provides that money can be withdrawn from the client account to reimburse the agency for money spent on the client's behalf, and at the client's written request; for any fees due to the agency by the client, or in respect of any advance of earnings paid to the client by the agency. Where the client has agreed in paper form or by electronic means to such a deduction, the agency should, where appropriate, provide an invoice or other written statement.

The paragraph also provides that if money has been used to open or maintain the account (under paragraph 3) or if the money has been split (under paragraph 4), it can be withdrawn to reimburse the person entitled to it. Additionally, under paragraph 5, if the money has been wrongly put into the account, it can be withdrawn and finally, any money required by law to be deducted from money earned (such as National Insurance contributions) before it is paid to the client. Such money can be withdrawn, provided that the amount to be withdrawn does not exceed the total amount held in that account in respect of that client.

Paragraph 7

This section sets out the limitations on how money can be withdrawn from a client account, when meeting the provisions of paragraph 6 of the Schedule. It provides that money can only be drawn from the account by a cheque or electronic transfer in the agency's name or by an account transfer to a credit institution in the name of the agency, but not to a client account. Only money permitted to be withdrawn under paragraph 6 can be drawn on a client account. Any withdrawal from a client account can only be carried out by an authorised signatory for the agency account being held by the credit institution.

Paragraph 8

This paragraph provides for transferring money from one client account to another client account, which can only be carried out with the consent of the client to whom the money belongs or where a work-seeker becomes entitled to a hirer's deposit paid into that account under terms of a contract with that hirer.

Paragraph 9

Accounts and records

Every agency is required to maintain accounts and records that are necessary to show any transactions relating to any client account held by the agency, including money received, held or paid and any other money dealt with through the account. Additionally, the accounts must show separately these transactions for each client and that these monies must be distinguished from any other money held or paid by the agency. The accounts should also show the current balance of each client account in the client's ledger or should facilitate obtaining a balance.

Sub-paragraph 2 requires that the transactions specified above should be appropriately recorded in a clients' cash account or a clients' column of a cash account and in a clients' ledger or a clients' column of a ledger. The agent should record no other transactions in that account, ledger or columns. All other transactions that do not fall within the dealings specified above should be recorded separately in whatever form the agency chooses to maintain (i.e. account, ledger or cash account column).

In addition to the accounts, ledgers and records referred to above, every agency must keep a record (along with copies) of all invoices and statements under the provisions of paragraph (6)(b), which is outlined above. In keeping these records, the agency must make sure to distinguish between fees and disbursements, delivered or made by the agency to its clients.

Under sub-paragraph (4), every agency must, within 21 days of the end of each calendar month: firstly, it has to compare the total of the balances

shown by the clients' ledger accounts of the liabilities to the clients, with the cash account balance as at the last day of the calendar month that has just ended as the basis; secondly, if there are any differences between these two balances, the agency must produce a statement explaining the cause; thirdly, the agency must reconcile the cash account balances with the balance shown on statements and passbooks of all client accounts, and money held elsewhere. Again, any differences between the two must be explained; and finally, the agency should take appropriate action to rectify any differences found.

Paragraph 10 – Inspection and report

Under paragraph 10, every agency that must keep accounts and records as specified in paragraph 9 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 one of the bodies listed in section 249D(3) of the Companies Act 1985. When engaging the accountant, the agency must ensure that his/her rights and duties are set out in the letter of engagement. The letter is set out in paragraph 10(2) of the Schedule. The agency must honour paragraphs (v) and (vi) of the letter of engagement.

Agencies that are required to maintain client account(s) must keep a copy of the reporting accountant's most recent report displayed at each of their premises so that it can be readily seen. However, this report does not have to include the information concerning the requirements that the agency has not complied with.

Paragraph 11 – Accounting period

The accounting period as mentioned in paragraph 10 of the Schedule (above) and regulation 25 is defined in this paragraph. If the agency has client accounts or accounts established prior to these Regulations coming into force, the first accountancy period will begin the day after the Regulations came into force. It will end on a day 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. However, if the client accounts or accounts were created on or after the Regulations came into force, the accounting period will begin on the day the first account was created. It will end on a day 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.

All subsequent accounting periods will begin on the day immediately after the end of the last period and end with a date no less than six months and not more than twelve months after that date. In the event of an agency closing its only client account on a date less than six months after the previous accounting period, that period will end on the day the account was closed.

Paragraph 12 – Preservation of client account records

Agencies that are obliged to maintain client account(s) under regulation 25 and this Schedule, must keep copies of all accounts, books, ledgers and records; copies of all invoices and statements issued to clients under paragraph 6(b) of the Schedule and all statements printed and issued by the credit institution, which holds the relevant client account; records falling under the reconciliations required under paragraph 9 of the Schedule and reports to the agency by accountants under paragraph 10. All such records must be held for at least six years.

These records must be kept at either the agency's business premises or elsewhere as long as they are easily accessible and that it is reasonably practicable for any agency member of staff to arrange for them to be delivered to those premises. Agencies may keep the information in electronic form so long as it can be reproduced in a legible form and, if no hard copy is kept, that this reproduction (with reasonable notice) can be printed.

Paragraph 13 – Interest

This paragraph requires the agency to notify a client of any interest earned on any sum being held on behalf of that client in a client account for more than ten days.

SCHEDULE 3 Occupations in respect of which employment agencies may charge fees to work-seekers

This Schedule lists the occupations that agencies can charge work-seekers fees for finding them work in.

SCHEDULE 4 – Particulars to be included in an agency or employment business records relating to work-seekers.

The details listed in this Schedule are straightforward and do not require further explanation.

SCHEDULE 5 – Particulars to be included in an agency or employment business records relating to hirers.

The details listed in this Schedule are straightforward and do not require further explanation.

SCHEDULE 6 – Particulars to be included in an agency or employment business records relating to other agencies or employment businesses.

The details listed in this Schedule are straightforward and do not require further explanation.

TERMS AND CONDITIONS OF EMPLOYMENT

The Employment Relations Act 1999 (Commencement No 9) Order 2003

The Order commences on 6 April 2004 certain provisions in Schedule 7 of the Employment Relations Act 1999 to amend specified sections of the Employment Agencies Act 1973, that have not already been enacted.

It will amend the definition of an employment agency in section 13 of the 1973 Act to extend its coverage to include work-seekers that are “persons”. Section 6(1) of the Act, which restricts the instances where agencies and employment businesses are able to charge work-seekers a fee for providing work-finding services, will also be amended. The restriction will now cover the situation where the agency/employment business “requests” a fee. The Order will also give additional powers under section 9 of the 1973 Act for the Employment Agency Standards Inspectors to copy records and other documents and to enter any relevant business premises. The self-incrimination provisions in that section are to be removed and replaced by a limitation to produce anything in line with any compulsion to produce in civil proceedings.

Note on the Recruitment and Employment Confederation and Equity

The Recruitment and Employment Confederation (REC) is the main professional body for the UK industry, with over 6,000 recruitment agency offices and 5,000 consultants in membership.

- Enabling recruitment agencies and professionals to demonstrate high standards and professionalism
- Informing the industry and providing a unified industry voice
- Providing essential business support services
- Providing tailored advice for niche markets
- Serving the regional needs of business

To enquire further about REC services, please either visit www.rec.uk.com or call 020 7462 3260.

Equity is the trade union representing 37,000 performers and creative personnel working across the arts and entertainment. Equity's membership includes actors, singers, dancers, choreographers, stage managers, theatre directors and designers, variety and circus artists, television and radio presenters, walk on and supporting artists, stunt performers and directors and theatre fight directors.

Negotiate minimum terms and conditions of employment

Offer help and advice to members and their agents on contracts and terms of engagement

Free legal and welfare advice to members as well as access to medical support through the British Performing Arts Medicine Trust Helpline and public liability insurance of up to £5million

Job information service and pension scheme

To contact Equity, visit our website www.equity.org.uk or call 020 7370 6000.

This document is intended to provide guidance on the operation of the Regulations and every effort has been made to ensure the information provided is accurate. However, this guidance does not in any way take precedence over the actual legislation or remove the need to obtain legal advice.



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