

GUIDANCE ON AMENDMENTS TO THE CONDUCT OF EMPLOYMENT AGENCIES AND EMPLOYMENT BUSINESSES REGULATIONS 2003 (the “2003 Regulations”)

The Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2007 (SI 2007/3575) (the “2007 Regulations”) make amendments to the 2003 Regulations (SI 2003/3319) following the Government’s consultation during 2007 on measures to address issues affecting the most vulnerable agency workers. The following amendments will come into force on 6 April 2008.

This guidance material should be used in conjunction with the main guidance on the BERR website
www.berr.gov.uk/files/file23765.pdf

Regulation 5 - Restriction on use of additional services

This applies to those agencies and employment businesses that provide, or arrange to provide, work-seekers with other services for a charge. These other services can include, amongst others, transport, accommodation, CV writing, photographic services or training.

Regulation 3 of the 2007 Regulations inserts regulation 5(2) to ensure that a work-seeker can cancel or withdraw from these services at any time, without suffering any detriment or penalty. The work-seeker must give the provider of such services (which in some cases will be the agency or employment business but, in others, may be a separate but connected supplier) written notice in either paper or electronic form. For services relating to the provision of living accommodation, 10 working days written notice is required. To cancel or withdraw from all other services, 5 working days written notice must be given.

Regulation 13 - Notification of charges and the terms of offer

It is important to note that an agency or an employment business is not permitted to charge fees to work-seekers for finding him or her employment (although there are some limited exceptions within the entertainment and modelling professions).

The regulation requires an agency or an employment business to inform a work-seeker, at the outset and in writing, of details of any fees relating to services which the work-seeker has chosen to take up.

As a consequence of the changes to regulation 5, regulation 13(1)(b)(iii) has been amended by regulation 4 of the 2007 regulations. An agency or employment business that offers to provide or arrange additional charged-for services is now required to set out in writing a notice describing the service for which a fee is payable and setting out the work-seeker's right to cancel or withdraw from the service and the length of notice period required.

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

Under regulation 21, agencies and employment businesses must provide detailed information on every assignment to both the hirer and the work-seeker when proposing a work-seeker to a hirer, or offering a work-seeker a position with a hirer. There is an exception under Regulation 21(3) where the work-seeker works in the same position for the same hirer within 5 days of the previous assignment. Where none of the information has changed, the information does not need to be provided again.

Regulation 5 of the 2007 Regulations amends this regulation to reduce administrative burdens on employment businesses where assignments are intended to last for 5 consecutive working days or less. Regulations 21(4) and (5) have been added to address such short term assignments.

For short term assignments, employment businesses still need to send written notifications but less information is required in these cases. If a short term assignment extends to more than 5 days then the full information under Regulation 21 is required.

If an employment business has already obtained from the work-seeker all the essential information regarding identity, experience, training, qualifications and any necessary authorisations (for example, where the work-seeker is already registered with the employment business), and where the assignment is intended to last 5 working days or less, it only needs to give to the hirer (orally or in writing) the name of the work-seeker and written confirmation that it has obtained this information (ie the work-seekers' identity, experience, training, qualifications and any necessary authorisations).

Similarly, if an employment business has already provided all the essential information regarding the type of work, experience, training, qualifications, and any authorisations necessary, together with any risks to health and safety and the rate of pay to a work-seeker (for example, when the work-seeker was placed on a previous, identical assignment), and where the assignment is intended to be for 5 working days or less, and that information remains unchanged from when it was first provided, the employment business only needs to provide (on paper or electronically) the work-seeker with the identity of the hirer, the nature of the hirer's business (if applicable), the date on which

the work-seeker must start work and the duration or likely duration of the work.

However, where an assignment is extended beyond 5 days, the outstanding information must be provided no later than the end of the eighth day of the assignment or, where the assignment ends sooner, the end of that assignment.

The 2007 Regulations do not specify how employment businesses should provide the essential information regarding the work-seeker and the type of work in order to comply with the lighter information procedure under the Amendment Regulations.

It may however be helpful to summarise the information requirements under different categories.

1. Full Requirements (*i.e. as under Regulation 21(1) in the 2003 Regulations*)

These requirements apply where the assignment does not fall under categories 2 and 3 below.

The agency or employment business must provide the following information in writing:

(a) To the hirer:

All information relating to the following-

- Identity of work-seeker, his/her relevant experience, training, qualifications, authorisations, and confirmation that s/he is willing to work in the position offered.
- For an employment business, status of work-seeker to be supplied (e.g. contract of service or contract for services).

(b) To the work-seeker:

All information relating to the following-

- Identity of hirer, nature of hirer's business, date on which work will commence, duration of work, position to be filled, known health & safety risks, experience, training, qualifications and authorisations required, expenses to be paid to him/her and details of remuneration, etc.

2. No Requirements, i.e. repeat assignments (within 5 business days), where the job position and hirer are the same and the relevant information is unchanged. (*i.e. the position under Regulation 21(3) of the 2003 Regulations*)

This applies to repeat business- where the agency or employment business have supplied a work-seeker to the same client within the **last 5 days**. Under this scenario, there is no requirement on the employment business or agency to provide any further information.

3. Partial Requirements, i.e. short assignment (5 business days or less) *(i.e. the position under Regulation 5 of the 2007 Regulations)*

This applies to assignments of 5 days duration or less. The employment business must provide the following information:

(a) To the hirer:

- Name of work-seeker; and
- Written confirmation of having obtained the following-

Identity of work-seeker, his/her relevant experience, training, qualifications, authorisations, and confirmation that s/he is willing to work in the position offered.

Note: in this context, “confirmation” means that the employment business must confirm to the hirer that the employment business has already obtained this information, rather than providing the information itself.

(b) To the work-seeker in writing (where the previous information was provided in writing and it remains unchanged)

All information relating to the following-

- Identity of hirer, nature of the hirer’s business (if applicable), the date on which work will commence and the duration or likely duration of work.

Note:

If there is a short assignment (i.e. 5 business days or less), where the work-seeker has not worked for that hirer previously, then the full information requirements are applicable in relation to work-seekers. However the partial requirements may also be applicable in situations where the work-seeker has been introduced to the hirer but not supplied.

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

Regulation 6 of the 2007 Regulations amends regulation 22(3) to correct a drafting error by substituting “paragraph (2)(a) and (b)” for “paragraph 2(b)”.

Regulation 22 now makes clear that, where an agency or employment business has taken all reasonable steps to obtain the required copies of qualifications and authorisations of the work-seeker, and to obtain two references, but has been unable to do so fully, it could comply with regulation 22 by informing the hirer of the steps it has taken in order to try and comply fully with the requirements. Previously this relaxation only applied where an employment business has taken every reasonable step to obtain references but had been unable to do so.

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

This regulation applies to agencies operating within the entertainment and modelling sectors (i.e. those who supply work-seekers employed in the occupations listed under schedule 3 to the Conduct Regulations). It allows these agencies to charge fees for finding work to work-seekers in these occupations under certain, limited circumstances listed below:

- a) A fee can only be charged by an agency and paid by work-seekers from earnings relating to work found by that agency.
- b) An agency can also charge a fee to work-seekers for including their details in a publication, where the publication is designed either to find the work-seekers work in any of those occupations, or to provide hirers with details about work-seekers looking for work in those occupations.

Regulation 7 of the 2007 Regulations amends regulation 26. Work-seekers in occupations listed in Schedule 3 will have a 7 day cooling off period in which they can cancel or withdraw from any contract to include their details in a publication without suffering any detriment or penalty by informing the agency that they have cancelled or withdrawn from the contract. Agencies will no longer be able to take fees from a work-seeker for including their details in a publication until 7 days after the work-seeker has entered into a contract with the agency. The cooling off period applies whether the work-seeker signed the contract at a casting session or approached the agency direct.

Regulation 28 – Confidentiality

This regulation prohibits an agency or employment business from disclosing information about a work-seeker, including to his/her current employer, without his/her prior consent, unless it is in order to provide work-finding services to that work-seeker (or for the purposes of legal proceedings, or to provide information to a professional body of which the work-seeker is a member).

Regulation 8 of the 2007 Regulations amends regulation 28 to make it clear that the obligation on agencies to inform the hirer if they receive information that suggests that a work-seeker they have supplied may be unsuitable for the position (i.e. that under **Regulation 20 – Steps to be taken for the protection of the work-seeker and the hirer**) takes precedence over the

general prohibition on disclosing information without the work-seeker's consent in Regulation 28.

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

The regulations automatically apply to work-seekers who are incorporated (i.e. limited company contractors). The regulations also apply to any person who is, or would be supplied by the incorporated work-seeker, to carry out the work.

However, the regulations provide that incorporated work-seekers, and those persons whose services they supply, can agree to opt out of the coverage of the regulations. In order to exercise the opt-out, both the incorporated work-seeker and the person(s) to be supplied to do the work (where appropriate), must give written notice to the agency or employment business that the regulations will not apply before they are introduced or supplied to the hirer.

Regulation 9 of the 2007 Regulations amends regulation 32(9) so that, where an incorporated work-seeker gives notice that the regulations shall not apply, the agency or employment business proposing to introduce or supply that work-seeker to a hirer, must inform that hirer that such an agreement exists and the regulations do not apply.

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

This Schedule lists the occupations in the entertainment and modelling fields where agencies can charge fees to work-seekers for work-finding services.

Regulation 10 of the 2007 Regulations amends Schedule 3 to include "clothes, hair or make up stylist".

Additional guidance has also been provided for potential migrants about living in Britain, including the cost of living. This guidance is available at www.berr.gov.uk/employment/migrant-workers/index.html

Additional guidance has also been provided for agencies supplying drivers. This is available at www.dft.gov.uk/pgr/freight/road/workingtime

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