



# **EMPLOYMENT AGENCY STANDARDS**

## **GENERAL ENFORCEMENT AND PROCEDURAL GUIDANCE**



## INDEX

	PARAGRAPH(S)	
Introduction		1
Enforcement Powers		2 - 13
Programme of visits		14 - 15
INSPECTIONS		16 - 17
- Action to be taken during visit to agency		18 - 20
- Infringements of the Act and Regulations		21 - 24
- Inspector's report		25 - 28
- Monitoring response to corrective letter		29
- Completion of inspection file		30
COMPLAINT INVESTIGATION		31 – 37
- Other legislation		38 – 39
- Allocation of complaints		40
- Initial points to consider		41 - 44
- Timing of investigations		45 - 46
Content of case file		47 - 48
Completion of the case		49
And finally		50



## **ANNEX**

Inspection Aide-Memoir	1
Inspection/Investigation report	2
Corrective letter	3
Holding corrective letter	4
Reminder corrective letter	5
6-week letter to complainant	6
Record of telephone calls	7

## INTRODUCTION



1. The purpose of this guidance is to assist Inspectors in carrying out inspections at employment agencies and investigating complaints. The Employment Agencies Act 1973 and supporting regulations require all employment agencies and employment businesses to abide by specified laws. The Inspectorates role is to ensure that users of agencies, particularly workers are not subjected to harm. For ease of reference the term employment agency will be used throughout this guidance, where appropriate, to describe the activities of both an employment agency and an employment business.

### Enforcement powers

2. Generally, Inspectors should be aware to use their powers of enforcement sensibly and not act bureaucratically. The aim, usually, should be to secure compliance with the legislation and encourage good practice.
3. However, the possibility of prosecution and/or prohibition should always be borne in mind, particularly where serious infringements of the legislation have occurred and regardless of whether or not the matter has previously been brought to the attention of the agency.
4. The attitude of the agent towards compliance or corrective advice should be taken into account in considering whether criminal proceedings are an appropriate course of action.
5. Section 9(1) of the Employment Agencies Act 1973 (as amended) provides that inspections or visits to agencies may be carried out at all reasonable times by an officer duly authorised by the Secretary of State. Furthermore, any obstruction of an officer carrying out these functions is a punishable offence.



6. Section 9 also sets out the circumstances under which an Inspector may enter premises, inspect records and take copies of such records and other documents, and from whom he may reasonably obtain information. It should be noted that a person need not answer any question, which may incriminate himself. (See section 9 of the 1973 Act).
7. In cases where Inspectors are making enquiries (i.e. asking questions or obtaining documents) as a consequence of telephone calls or letters to the agency, the exercising of their powers under Section 9 powers generally still apply.
8. Any information obtained by Inspectors in the course of exercising their enforcement powers (including powers as set out in paragraph 7) may only be disclosed in specified circumstances. If in doubt Inspectors should refer to section 9(4) and consult their line manager.
9. It is an offence under Section 9(3) for a person to obstruct an Inspector in the exercise of his powers.
10. Inspectors should not use forcible entry or demand that a search be carried out. In order to prove a charge of obstruction, it is necessary to show that on the day in question, the Inspector:
  - (a) had reasonable cause to believe that the premises had been/are being used for or in connection with the carrying on of an employment agency;
  - (b) called at the premises of the employment agency and/or employment business;



(c) read over to the agent or his representative the authority under Section 9(1) as amended for: -

- (i) entering the premises,
- (ii) inspecting those premises and any records and other documents kept in pursuance of the Act and associated Regulations,
- (iii) taking copies of records and other documents inspected under (ii),
- (iv) requiring a person to furnish information except when this would incriminate either himself/herself or his or her wife/husband,
- (v) can identify the person who obstructed him/her.

11. When it is anticipated that an agent or his representative may be uncooperative or obstructive, the Inspector should contact the agent and make a convenient appointment to visit him/her. If appropriate the agent should be advised of the powers of Section 9 orally and followed up formally in writing. If the agent or its representative remains un-cooperative, the Inspector should visit the premises accompanied by another Inspector or Line Manager.

12. If the agent remains obstructive at the visit, the agent should be asked if he or she will allow the Inspector to carry out their duties. In this respect, separate questions should be put to the agent; he or she should be asked if they will allow access to the premises, they should then be asked if they will allow access to the records.

13. If the agent refuses entry or access to the records the Inspector should issue a formal caution (in accordance with the Police and Criminal Evidence Act 1984 – see EAS Prosecution Guide). The questions about entry to the premises and access should be put to the agent again and a verbatim record should be kept of the questions asked and the responses of the agent. Following the visit a report should be prepared and

submitted to lawyers to consider whether criminal proceedings should be instigated.



### **Programme of visits**

14. All types of visits e.g. investigation of complaints and inspections should be planned by Inspectors utilising their time management skills and making sure they take the most cost effective route. Itineraries should be drawn up as appointments are made, by using the calendar in Microsoft Outlook. This will enable all EAS staff to be aware of each Inspector's movements during the working week.
15. It is important that Inspectors maintain an updated calendar in order that it can be used as an effective management information tool, as well ensuring that management can identify each Inspector's planned travel arrangements from a health and safety viewpoint.

### **INSPECTIONS**

16. Generally, Investigation Managers will instruct, or agree with Inspectors if inspections of employment agencies are necessary. From time to time, certain types of agency or agencies within a specified geographical location may be targeted for inspections. The particular type or location will be selected by the Inspectorate where it believes that infractions are most likely to occur.
17. Agencies, which are found to be in breach of the legislation, may need to be considered for a follow up inspection. This will depend on several factors, including the type and/or number of infringements identified and the general attitude of the agency. Ideally, if a follow up visit is deemed necessary, this should take place around 6 months following the previous



visit. The Inspector should maintain a record of when the next visit is due and carry it out, to ensure full compliance with the legislation.

### **Action to be taken during visit to an agency**

18. When carrying out an inspection, Inspectors should complete an appropriate aide-memoir. A sample can be found at Annex 1. The Inspector should ensure that he obtains the necessary documentation (which will depend on the nature of the visit) and to check that it is consistent with the law.
19. Inspectors should obtain examples of the agency's terms and conditions to work seekers and the terms that they supply to hirers. Where both employment agency and employment business activity are being conducted, the documentation of 2 examples of each type of placement (employment agency and employment business) should be inspected and the details noted appropriately on the aide-memoir.
20. In cases, when only one type of activity is being carried out, the Inspector should look at the documents of 4 examples of placements, and again, note the aide-memoir. If, however, the Inspector finds that the agency is very well run and the records are in good order, he/she may use his discretion and look at fewer placements. Equally, if the standards are poor, the Inspector may need to examine further records.

### **Infringements of the Act and Regulations**

21. Where infringements are found, the Inspector should draw the agency's attention to them and issue corrective advice. The infringements found should be confirmed in writing by sending a *corrective letter* to the agency (within 5 working days of the inspection visit). The agency must be asked



to confirm in writing the remedial action they intend to take against each infringement identified. See Annex 3.

22. If during the visit the agency has taken immediate corrective action and the Inspector is satisfied that no other infringements exist, there is no need to send a corrective letter.
23. When serious infringements are found, criminal proceedings should be considered. If after seeking advice from line management, criminal proceedings are not considered to be appropriate, the Inspector should send a corrective letter to the agency advising him that, if further breaches are identified, it could lead to the Department instigating criminal proceedings and/or applying for a prohibition order. If criminal proceedings are being considered, the Inspector should obtain details of workers or hirers affected by the breaches of the legislation and carry out further enquiries of them.
24. Inspectors should refer to the EAS Prosecution Guide before embarking on criminal investigation. The Prosecution Guide is designed to assist Inspectors in the collection of evidence and taking statements.

### **Inspector's report**

25. Following a visit to an agency to conduct an inspection the Inspector should, within the following 5 working days, compile a report setting out the full name(s) of the person(s) seen, the name and address of the agency, the nature of any infringements, response of the agency, the action taken and any recommendation for a further inspection to be carried out within a specified interval. A report form as in Annex 2 should be used.



26. The Inspector's report does not have to repeat information that is already set out in the corrective letter.

27. It is important that Inspectors maintain all handwritten notes or aide-memoirs that they complete during an inspection. If criminal proceedings are subsequently pursued, the evidence that is submitted to lawyers might have to refer to the Inspector's visit to the agency. To comply with the provisions of Criminal Procedures and Investigations Act 1997, the investigation authority must keep all documents. Hand-written notes and aide-memoirs completed during an inspection or investigation are deemed as 'unused material'. In any criminal proceedings, all unused material has to be listed on a schedule and submitted with the case papers to lawyers. The schedule is then issued to the defendant or his/ her solicitors, so that they are made aware of all material that has been gathered during an investigation.

28. An Inspector might need to seek further advice from line management or obtain legal advice before preparing a corrective letter to the agency. In such cases, the Inspector should send a holding letter to the agent advising them of the position. (See appendix 5)

### **Monitoring response to corrective letter**

29. It is Head Office's (HO) responsibility to obtain a satisfactory reply to any corrective letter issued. As soon as the corrective letter has been sent, the Inspector should return the case file to HO. HO staff will then ensure that the appropriate follow up action is taken and that cases are not overlooked. Annex 5 is a sample reminder letter. If an agency does not reply to a corrective letter, or to a subsequent reminder letter, HO staff will consider the case on its merits and decide the appropriate course of action. This may mean that HO staff will contact the agency to request a written response or, if necessary, arrange for the file to be despatched to

an Inspector to carry out a further visit to the agency to ensure that remedial action has been undertaken.



### **Completion of inspection file**

30. Once an inspection file is completed, the Inspector will be informed. If a case is being considered for prosecution or prohibition, the Inspector responsible for the case will be kept informed of developments. See paragraph 48 for the content of case files.

## **COMPLAINT INVESTIGATION**

31. A complaint is any statement, whether given orally or in writing from a person who is aggrieved or dissatisfied with the treatment he/she has received from an agency. The complaint can relate to matters either within, or outside, the scope of the legislation.

32. Complaints can be received from various sources (e.g. direct from workers, hirers, other agencies, MPs, trade unions or employers' associations, through articles in the press, or internally from EAS/DTI staff or other Government Departments).

33. On receipt of the complaint, it is passed to an Investigation Manager (IM), who will ascertain whether the matter is one, which can be dealt with under the legislation. HO will write directly to those whose complaints are outside the scope of the legislation.

34. Even if a complaint is outside the scope of the legislation, the IM might still consider that a visit to the agency to inspect records is advisable.

35. In some cases, Inspectors might be contacted directly by complainants or receive complaints when they are visiting agencies. Whether or not a



complaint is about an agency within the Inspector's own geographical area, they should send details of the complaint to HO in order for the database to be updated and a file raised.

36. EAS may receive complaints from hirers where there is disagreement over the terms of business or their application. Provided the provisions of the Conduct Regulations have not been contravened, the complaint should be treated as a contractual matter, to be resolved between the respective parties and on which they should seek their own legal advice.
37. Similarly, providing that the provisions of the Regulations, relating to the terms agreed with work-seekers have been met, complaints arising from contracts entered into between agencies and work-seekers, are matters, which should be resolved by the parties concerned and on which they can take their own legal advice.

### **Other legislation**

38. The provisions of the Working Time Regulations 1998 (WTR) cover holiday pay and hours of work. Although agency workers are covered by WTR, it is not the Inspectorate's role to enforce these. If agency workers complain that they are not receiving their entitlements under WTR, they should be advised to either contact their local ACAS office, or seek legal advice from their local CAB or Law Centre.
39. Similarly, agency workers are also covered by the provisions of the National Minimum Wage (NMW) legislation but the issues arising under that legislation are not covered by the 1973 Act and associated Regulations. Complainants should be referred to either the NMW Help line, ACAS or CAB.



## Allocation of Complaints

40. IMs normally allocate casework to Inspectors, according to geographical area. However, depending upon the Inspectors' caseloads, IMs may from time to time send cases to other Inspectors.

## Initial points to consider

41. Where there is a complaint for investigation, the Inspector should on the information to hand at that time, carefully consider the nature of any alleged infringements of the legislation, which may have occurred and what evidence is needed (e.g. relevant documents such as contracts or other written statements or correspondence), to support the complaint.
42. At the outset of any investigation Inspectors should satisfy themselves about the scope position. In particular, whether the services are covered by the definitions of employment agency or employment business activity, as set out in section 13(2) and section 13(3) of the Employment Agencies Act 1973.
43. If the activity is within scope of our legislation and the initial evidence shows serious infringements, the Inspector should consult his/her IM and, if appropriate, gather evidence with a view to bringing criminal proceedings. The EAS Prosecution Guide should be referred to before embarking on any proceedings.
44. The EAS Inspectorate will treat every complaint it receives in strictest confidence. Inspectors should establish whether the workers or complainants are prepared for their details to be disclosed during any investigation carried out by the Inspectorate. When dealing with complaints made by a third party (e.g. an MP, an agency, a trade or employers' or workers' association, or friends or relatives), the Inspector

should first obtain the complainants' specific consent for an investigation to take place on their behalf.



### **Timing of investigations**

45. EAS aims to complete investigations within 6 weeks from the date of receipt of a complaint.
46. If Inspectors are unable to complete an investigation within that period , they will contact the complainants, before the end of the 6-week period. They must inform them of any delay and where possible explain what action has been taken. Inspectors should note the file accordingly showing when and how contact was made. See Annex 6.

***For information on (a) the action to be taken by Inspectors when carrying out an investigation visit to an agency, (b) identifying infringements to the legislation, (c) Inspector's reports and (d) monitoring the response to corrective letters – please refer to paragraphs 18 to 30.***

### **Content of Case File**

47. When an investigation has been concluded the Inspector and HO staff must ensure that each case file contains the following (where appropriate):

-

- record of complaint from complainant/completed complaint form, including any documentation supplied
- acknowledgement letter to complainant
- HO instructions
- any manuscript notes
- 6-week letter to complainant (if applicable)
- record of any telephone calls to complainant/agency or others
- example terms and conditions to workers collected at visit to agency



- example terms to hirers collected at visit to agency
- any other documentation obtained from agency
- aide memoir and/or notes taken at agency visit
- investigation/inspection report
- letter to complainant notifying the outcome of investigation
- corrective letter (if applicable)
- reminder corrective letter (if applicable))
- agency's reply to corrective letter (if applicable)
- completed control sheet (completed by Inspectors)

48. It is important that Inspectors should note every contact with the agency, complainants and other contacts relating to the investigation, on either a form as in Annex 7, or by using the Task facility in Microsoft Outlook. They should keep the completed record in the case file.

### **Completion of the case**

49. Any files that are received in HO, without the documents as set out in paragraph 47, will be returned to the appropriate Inspector.

### **And Finally**

50. If any Inspector is having difficulty in dealing with casework or his/her workload is at an unmanageable level, he/she should contact one of the IMs.



## INSPECTION AIDE-MEMOIR

Trade Names	
Person seen: Surname	Forename
Position	
Phone No	Date
Brief description of type of Agency / or business	<b>YCF</b>
Activities: Secretarial/commercial Industrial/construction Teaching Catering Childcare Professional Drivers Healthcare Model Entertainment Others	
Staffing:	EA, EB or both? %
Geographical area:	
Independent or National?	HO located?
REC member? Yes/No	
Other association? Yes/No If which?	
Are premises suitable?	Yes / No (if no why not?)
Do terms of business include:	
Scale of fees	Yes / No / Not applicable
Details of rebates	Yes / No / Not applicable
Procedure if temp unsatisfactory	Yes / No / Not applicable
Fee if temp employed by hirer	Yes / No / Not applicable
Contractual relationship between agency & worker	Yes / No / Not applicable
Is there any indication that fees are being charged to workers? If so give full details	



**Advertisements**

Regulation 27(1)	Full name/ disclosure (EA or EB)
Regulation 27(2)	Authority of hirer and specific positions
Regulation 27(3)	If rate of pay quoted for EB, check that adverts include, Nature of work Location of work Minimum qualifications

**SCHEDULE 4 (Regulation 29 – Work-seekers information)**

Date application rec'd				
Name, address and DOB				
Any terms between work seeker and EA/EB				
Training, exp quals. etc held including copies				
Specific requirements by work seeker				
Names of hirers introduced to				
Engagement? Date of effect				
Contract by hirer for work seeker?				
Date appln withdrawn or terminated				



Confirmation of identity (Reg 19)				
Enquiries as to suitability (reg 20)				
Professional qualifications req'd or work with vulnerable (Reg 22)				



**SCHEDULE 5 – Records relating to hirers (Regulation 29)**



Date appln rec'd				
Hirer's name & address				
Location if different from above				
Identity of hirer (Reg 18)				
Nature of business (Reg 18)				
Position req'd				
Duration or likely duration				
Experience etc required				
Terms offered (Hrs/rate of pay/benefits/pay intervals/expenses by or to/length of notice) (Reg 18)				
Copy terms of business + any variation				
Names of work seekers introduced or supplied				
Reg 20 – legal requirements imposed				
Record of any checks re unsuitability of work seeker (Reg 20)				



**INSPECTION/INVESTIGATION REPORT - Paragraph 25**

**Agency Name:**

**Reference Number:**

**Address:**

**Telephone Number:**

**Person(s) seen/contacted:**

**Status:**

**Date(s) visited/contacted:**

**Date cleared by letter/telephone:**

**Date infringement letter sent:**

**Date reminder sent:**

**Infringements found:**

**Inspection/Follow Up inspection/Investigation substantiated/Investigation unsubstantiated/Out of scope (delete as appropriate)**

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ANNEX 3



**CORRECTIVE LETTER - Paragraph 21**

**Department of  
Trade and Industry**  
Employment Relations  
Directorate  
Room 3134  
1 Victoria Street  
London  
SW1H 0ET

Enquiries 020 7215 5000

URL <http://www.dti.gov.uk/e>  
Telex 8813148 DIHQ G  
Minicom 020 7215 6740

Direct line  
Local fax  
Our ref  
Your ref  
Date

Dear

**EMPLOYMENT AGENCIES ACT 1973**

When I visited/contacted you on \_\_\_\_\_, to carry out an inspection/discuss  
the complaint this office received from \_\_\_\_\_, I drew your attention to  
the following infringements of the Conduct of Employment Agencies and  
Employment Businesses Regulations 2003 (Statutory Instruments No 3319).

We discussed how you might set matters right and I would appreciate, your  
written confirmation, within the next 2 weeks, of the steps you have taken to  
correct each of these infringements.

Thank you for your help and co-operation.

Yours sincerely

Inspector

ANNEX 4



**HOLDING CORRECTIVE LETTER – Paragraph 28**

**Department of  
Trade and Industry**  
Employment Relations  
Directorate  
Room 3134  
1 Victoria Street  
London  
SW1H 0ET

Enquiries 020 7215 5000

URL <http://www.dti.gov.uk/e>  
Telex 8813148 DIHQ G  
Minicom 020 7215 6740

Direct line  
Local fax  
Our ref  
Your ref  
Date

Dear

**EMPLOYMENT AGENCIES ACT 1973**

When I visited/contacted you on \_\_\_\_\_, to inspect your records/to  
discuss the complaint this office received from \_\_\_\_\_, we discussed  
(insert appropriate text)

I am currently seeking further advice on this matter and I will write to you again  
in due course.

Yours sincerely

Inspector

ANNEX 5



**REMINDER FOR CORRECTIVE LETTER - Para 29**

**Department of  
Trade and Industry**  
Employment Relations  
Directorate  
Room 3134  
1 Victoria Street  
London  
SW1H 0ET

Enquiries 020 7215 5000

URL <http://www.dti.gov.uk/e>  
Telex 8813148 DIHQ G  
Minicom 020 7215 6740

Direct line  
Local fax  
Our ref  
Your ref  
Date

Dear

**EMPLOYMENT AGENCIES ACT 1973**

I refer to my letter to you of \_\_\_\_\_, a copy enclosed, in which I drew your attention to infringements of the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (Statutory Instruments No 3319).

According to our records you have not replied to this letter.

I would be grateful if you would reply to this letter within the next 7 days. If I do not hear from you, I will have to make arrangements to visit you again, to ensure that you comply with the legislation.

Yours sincerely

Inspector

Enc

ANNEX 6



**6-WEEK LETTER TO COMPLAINANT - Para 46**

**Department of  
Trade and Industry**  
Employment Relations  
Directorate  
Room 3134  
1 Victoria Street  
London  
SW1H 0ET

Enquiries 020 7215 5000

URL <http://www.dti.gov.uk/e>  
Telex 8813148 DIHQ G  
Minicom 020 7215 6740

Direct line  
Local fax  
Our ref  
Your ref  
Date

Dear

**EMPLOYMENT AGENCIES ACT 1973**

ABC Agency

I am writing to inform you that we have not, as yet, been able to complete our investigation into your complaint against the above agency.

This is due to .....

I will write to you as soon as possible to let you know the outcome of your complaint or if there is any further delays in completing this investigation.

Yours sincerely

Inspector



**RECORD OF TELEPHONE CALLS – Paragraph 47**

RECORD OF TELEPHONE CALLS				
REF NO:			NAME OF AGENCY:	
Date	Who called who	Reason	Content of conversation	Duration



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