

# **EMPLOYMENT AGENCY STANDARDS INSPECTORATE**

## **Summary Guidance on the Employment Agencies Legislation**

**and**

## **Our Service Standards**

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This booklet is intended to provide general guidance on the legislation – the Employment Agencies Act 1973 (the 1973 Act) and the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (the Conduct Regulations), which govern the conduct of the private recruitment industry and every effort has been made to ensure the information provided is accurate. However, it does not in any way take precedence over the actual legislation or remove the need to obtain legal advice.

Copies of the Conduct of Employment Agencies and Employment Businesses Regulations 2003 are available from branches of The Stationery Office (TSO) or through TSO's Accredited Agents (see Yellow Pages). Copies can also be downloaded from the TSO website - ([www.hmsso.gov.uk](http://www.hmsso.gov.uk)). More detailed Guidance, on the provisions of the legislation in this area can be obtained from the DTI by ringing 0845 955 5105 or downloaded from the DTI website.

Anyone operating, or considering operating, as an employment agency or employment business is strongly advised to obtain copies of the legislation. If you need additional information you should contact the Employment Agency Standards Inspectorate (see page 29).

The Employment Agencies Act 1973 (as amended by the Employment Protection Act 1975, the Deregulation and Contracting Out Act 1994, the Employments Rights (Dispute Resolution) Act 1998 and the Employment Relations Act 1999) and the Conduct of Employment Agencies and Employment Businesses Regulations 2003 set minimum standards for employment agencies and employment businesses operating from premises in Great Britain.

All employment agencies and employment businesses must comply with the provisions in the legislation. These provisions are designed to protect work-seekers and employers using the services provided by an employment agency or employment business.

An employment tribunal may, on application by the Secretary of State, make an order prohibiting a person from operating an employment agency or employment business.

## **THOSE COVERED BY THE ACT**

The 1973 Employment Agencies Act applies to employment agencies and employment businesses, whether they are carried on as commercial concerns for profit or as non-profit making bodies. This includes those that provide work-finding services for au pairs, apprentices, the self-employed, incorporated work-seekers or those covered by contracts of employment.

### **Employment agencies**

In the 1973 Act an 'employment agency' is defined as the business of providing services (whether by the provisions of information or otherwise) for the purpose of finding workers employment with employers or of supplying employers with workers for employment by them. The Act applies to agencies engaged in a wide range of different sectors, for example, those finding work in the industrial and office sectors, entertainment and model agents, and the executive selection functions of management consultants and search agencies. In addition, those recruitment companies that operate on-line and those that use a publication will also be covered. Once the work-seekers are engaged by the employer, they have no further contractual relationship with the agency. Work-seekers looking for permanent employment would, therefore use the services of an employment agency.

### **Employment businesses**

The other type of recruitment activity covered by the legislation is the 'employment business'. An employment business is engaged in supplying people, who are employed by the person carrying on the business, to act for, and under the control of other people in any capacity. This covers the hiring out of workers on a temporary basis. It has long been associated with the supply of temporary office staff, but has also extended into many other areas, including professional and industrial occupations. However, the Act does not cover sub-contracting work, where independent contractors undertake specific tasks using their own staff, who act and remain under the contractor's direction and control.

The legislation acknowledges that many persons operating within the private recruitment industry may provide services as either an employment agency or employment business, depending upon their clients' requirements.

## **THOSE EXCLUDED FROM THE SCOPE OF THE 1973 ACT**

Exclusions from the scope of the Act include the following:

Services provided by university appointments boards and certain other educational institutions, by local authorities, by trade unions, employers' organisation and certain professional bodies for their members or by charitable organisations;

Certain services provided exclusively for ex-members of HM forces or for persons released from prisons or other institutions;

Publishing a newspaper or other publication, unless it is published wholly or mainly for the purpose of providing work-finding services;

The display of advertisements on premises that are not otherwise used for work-finding purposes;

The provisions of a programme service (within the meaning of the Broadcasting Act 1990);

Full details of those excluded from the legislation are set out in section 13 (4) & (7) of the 1973 Act.

## FEES

Under the provisions of section 6(1) of the Employment Agencies Act 1973, employment agencies and employment businesses are prohibited from charging fees to workers for finding or seeking to find them jobs. The only two exceptions to this provision are:

(i) the finding of jobs for performers and certain other workers in the entertainment sector, photographic or fashion models and professional sports persons. This exception is limited to the occupations listed in Schedule 3 of the Conduct Regulations 2003; and

(ii) an agency is able to charge a fee to work-seekers who are companies.

**NOTE:** The legislation does not regulate the size of the fees charged to employers or workers by employment agencies, the charges employment businesses make to employers, or to the rates paid by employment businesses to workers employed by them. However, Regulation 10 of the Conduct Regulations (see page 8) places certain restrictions on the charging of fees that an employment business can charge a hirer who employs a temporary worker direct, uses a different employment business to supply that worker, or introduces that worker to be employed by another person.

## STANDARDS OF CONDUCT

The Secretary of State has made the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (SI 2003 No. 3319) under section 5 of the 1973 Act to regulate the operation of employment agencies and employment businesses. These Regulations set the standards that the private recruitment industry must meet. Detailed guidance on these Regulations is contained in pages 8-25 of this Guidance.

## CODE FOR ENFORCEMENT AGENCIES

The explanation of the legislation in this guidance and the information in the following sections comprise the Employment Agency Standards (EAS) Inspectorate's Code for Enforcement Agencies.

The enforcement functions under the Act are carried out by visiting inspectors. The 1973 Act enables the inspectors to enter premises which they have reason to believe are used for the purposes of an employment agency or employment business. They have powers to inspect those premises and any records or documents kept in accordance with the Act or regulations. They may also require the production of such information as they may reasonably need to ascertain whether the Act and regulations are being complied with or to enable the Secretary of State to exercise his functions under the Act. All EAS inspectors carry official means of identification.

Our enforcement policy includes investigating, as a priority, any complaint about the conduct of an employment agency or employment business. Unless the person making the complaint states otherwise, we treat any complaint in confidence and will not inform the agency/employment business of the identity of the person making the complaint. Our inspectors also follow up other information about possible misconduct and undertake random checks of employment agencies and employment businesses.

If our inspectors find evidence of breaches of the 1973 Act or Conduct Regulations, the next steps will depend upon the circumstances of the case. If the infringements are minor, or where an agency/employment business is found for the first time to be in breach of the legislation, the usual approach is for inspectors to explain the position, to require the agency/employment business to change its arrangements to put right the infraction and to warn it against further breaches in the future. However, in more serious cases, this explanation will also be provided in writing. That explanation will be in terms of obligatory requirements because the specific nature of the legislation leaves no room for recommending actions which are not mandatory.

In the case of an agency/employment business which is found to have breached the legislation previously, or which has caused serious harm to those using its services through disregard for the protective provisions, the Inspectorate may take the option of prosecution in a magistrate's court or an application for a prohibition order.

If an agency/employment business wished to question any explanation given by an inspector or to make representations about the application of the law, we will take note of the points raised, seek legal advice if necessary and advise appropriately. Such questions or representations should be sent to:

Operations Manager,  
Employment Agency Standards Inspectorate  
Department of Trade and Industry  
3134, 1 Victoria Street  
London  
SW1H 0ET

# EMPLOYMENT AGENCY STANDARDS INSPECTORATE - OUR SERVICE STANDARDS

## Complaints about employment agencies and employment businesses

The EAS Inspectorate will investigate, as a matter of priority, complaints about the conduct of an agency/employment business which fall within the scope of the legislation. If you wish to make such a complaint, you should contact the EAS Inspectorate either in writing, by telephone, fax or email. (See page 29 for contact addresses, telephone and fax numbers). Should you require it, we will supply a form to assist you in making your complaint.

We will give you a written explanation of the result of the investigation. If we cannot complete the investigation within 6 weeks, we will keep you informed of what is happening.

## Our service to our customers

You can expect the staff of the EAS to provide a helpful, courteous and efficient service. Our staff will identify themselves by name. We welcome feedback on any part of the service we provide.

If something has gone wrong with the way you have been treated or the way your complaint about a particular agency/employment business has been dealt with, please write to the Operations Manager, Employment Agency Standards Inspectorate at the address given above.

If it is found that we owe you an apology because of any shortcomings in the service we have provided, we will give one. We will also explain what went wrong and what we will do to put it right.

You may also write at any time to a Member of Parliament, who may decide to refer your complaint to the Parliamentary Commissioner for Administration (the Ombudsman).

## Consultation

We will undertake consultations with appropriate bodies, including the private recruitment industry's representative bodies, individual agencies, trade unions and other interested parties, to discuss how best to deal with compliance failures and other matters of mutual concern.

## Advice and Guidance

Advice on the application of the legislation regulating employment agencies and employment businesses is available from the EAS Helpline (0845 955 5105).

Copies of this booklet and the comprehensive Guidance on the Conduct of Employment Agencies and Employment Businesses Regulations 2003 can be downloaded from the EAS website. Copies of the Conduct Regulations can be obtained from local branches of The Stationery Office or can be downloaded from the website: [www.hmso.gov.uk](http://www.hmso.gov.uk).

# INFRINGEMENT OF THE ACT AND CONDUCT REGULATIONS

## PROSECUTIONS

Any person who:

- contravenes the prohibition on charging fees to workers;
- contravenes or fails to comply with any of the Regulations made to secure the proper conduct of employment agencies and employment businesses;
- makes, causes to be made, or knowingly allows false entries to be made in any record or document that has to be kept under the Employment Agencies Act 1973 or the Conduct of Employment Agencies and Employment Businesses Regulations 2003; or
- fails without reasonable excuse to comply with a prohibition order;

will be guilty of an offence and liable on summary conviction to a fine not exceeding £5,000 for each offence.

In addition, any person who obstructs an officer in carrying out any enforcement functions will be guilty of an offence and liable on summary conviction to a fine not exceeding £1,000. **(Check)**

## PROHIBITION ORDERS

An employment tribunal may, on application by the Secretary of State, make an order prohibiting a person (including a company) from carrying on, or being concerned with the carrying on of, an employment agency or employment business for up to 10 years on the grounds that the person concerned is unsuitable because of misconduct or any other sufficient reason.

**A prohibition order may:**

prohibit a person from running an employment agency or employment business , or any description of employment agency or employment business specified in the order; or  
impose certain conditions under which a person may be allowed to run an employment agency or employment business.

# THE CONDUCT OF EMPLOYMENT AGENCIES AND EMPLOYMENT BUSINESSES – Detailed Guide

## Obligations on Employment Agencies and Employment Businesses and Rights of Work-Seekers

### Additional services - regulation 5

An agency/employment business cannot require the work-seeker to use any other service it may provide, such as training or photography, for which it can make a charge, or hiring or buying goods, as a condition for providing work-finding services to that work-seeker.

### Restriction on detrimental action – regulation 6

A contract between an agency/employment business and a work-seeker cannot penalise the worker for terminating or giving notice to terminate that contract. Nor can the work-seeker be required to disclose the identity of a future employer. However, this provision does not cover the loss of any benefits the worker would have received if the contract had not been terminated, the requirement to give reasonable notice and the recovery of losses arising from that termination. These provisions do not cover a worker employed under a contract of service or apprenticeship.

### Restriction on providing workers in an official industrial dispute – regulation 7

An employment business must not supply a worker to carry out the duties of a worker involved in an official industrial dispute or to perform the duties of any other worker employed by the hirer who has replaced the worker on strike. However, this provision will not apply if the employment business was unaware that the hirer's worker was involved in the dispute.

### Restriction on paying workers' remuneration – regulation 8

Unless an agency is allowed to charge the work-seeker a fee in accordance with regulation 26 and complies with the provisions of regulation 25 and Schedule 2 to the Regulations, it cannot pay the worker either directly, or through a person to whom the agency is connected, the wages earned from the employment found by the agency.

### Restriction on agencies/employment businesses acting on a different basis - regulation 9

When an agency/employment business is introducing or supplying a work-seeker to a hirer, it cannot act as an agency to the work-seeker and an employment business to the hirer, or vice versa. They must act on the same basis to both parties.

### Restriction charging fees to hirers – regulation 10

For a term in a contract between an employment business and a hirer, which entitles the employment business to charge a transfer fee if the temporary worker is either directly employed by the hirer or supplied to the hirer through another employment business, to be enforceable certain conditions must apply.

The contract must provide that, instead of a transfer fee, the hirer can give notice to engage that temporary worker for a specified period of hire.

During this specified hire period if there has been no supply, the terms set out in the contract will apply, otherwise the terms will be no less favourable to the hirer than those which applied before the notice was received by the employment business.

The transfer fee term will also be unenforceable where the employment business does not then supply the worker to the hirer for the extended period, unless the employment business is not at fault.

### Relevant period

There is also a limit on the time during which certain terms in a contract can be enforced. These terms apply to work-seekers taking up employment with the hirer, or with any person to whom the hirer has introduced them; or working for the hirer having been supplied by a different employment business. These are often referred to as “temp-to-perm”, “temp-to-third party”, or “temp-to-temp” transfers respectively.

Any such term is unenforceable by the employment business where the worker begins that employment or is supplied by another employment business after the end of the relevant period. The “relevant period” is whichever of the following periods ends later:

- (i) (i) 8 weeks starting from the day after the day on which the worker last worked for the hirer having been supplied by the employment business; or
- (ii) (ii) 14 weeks beginning from the first day on which the worker worked for the hirer having been supplied by the employment business.

The relevant period to apply will, therefore, be determined by the length of the hire period.

**Example 1:** The hire begins on 2 August 2004, ends on 6 August 2004, and lasted for **1 week**;  
8 weeks after the end of the hire period is 1 October 2004,  
14 weeks from the first day of work is 8 November 2004.

The relevant period therefore ends on the later date – 8 November 2004.

**Example 2:** The hire begins on 2 August 2004, ends on 6 September 2004, and lasted for 5 weeks + 3 days;  
8 weeks from the end of the hire period is 4 November 2004,  
14 weeks from the first day of work is 8 November 2004.

The relevant period therefore ends on the later date – 8 November 2004.

**Example 3:** The hire begins on 2 August 2004, ends on 13 September 2004, and lasted for 6 weeks + 1 day;  
8 weeks from the end of the hire period is 9 November 2004,  
14 weeks from the first day of work is 8 November 2004.

The relevant period therefore ends on the later date – 9 November 2004.

If the hire period lasts for more than 6 weeks, the relevant period will end 8 weeks after the last day of the hire.

When determining the first day on which the worker was supplied to the hirer by the employment business, any such spell of employment, which occurred prior to a period of 42 days during which that work-seeker did not work for that hirer having been supplied by that employment business, will not be included.

### **Entering into a contract on behalf of a client – regulation 11**

An employment business cannot enter into a contract with a hirer on behalf of a work-seeker or on behalf of the hirer with the work-seeker.

Similar restrictions apply to an agency, unless the person for whom it acts has given permission for the agency to act on his behalf. Where the agency acts for the work-seeker, it must be allowed by regulation 26(1) (see page 16) to charge a fee for the work-finding services covered by the contract. Furthermore, it must inform its client, and the other party to the contract, of the terms of the contract within five business days of the agency entering into that contract.

However, when agreeing the terms of a contract an agency cannot act on behalf of both the work-seeker and the hirer.

### **Withholding payment to work-seekers – regulation 12**

An employment business cannot withhold or threaten to withhold any payment due to workers for work they have carried out on any of the following grounds:

- (i) (i) the hirer has not paid the employment business for supplying the temporary worker;
- (ii) (ii) the worker has failed to produce a document authenticated by the hirer (e.g. a timesheet). However, the employment business may take action to satisfy itself that the worker did, in fact, work for the particular period;
- (iii) (iii) the worker did not work during any period ***other than that*** to which the payment relates;
- (iv) (iv) any matter within the control of the employment business.

## **REQUIREMENTS TO BE SATISFIED BEFORE SERVICES ARE PROVIDED**

### **Notification of Charges and Terms of Offers – regulation 13**

When the agency/employment business first offers to provide its services to a work-seeker, if it is to make a charge for providing its services or goods, it must provide the following information to the work-seeker:

- (a) (a) whether it is prohibited by the 1973 Act from charging for that work-finding service;
- (b) (b) what other services or goods may be provided, for which the agency/employment business can charge a fee and details of that fee, including the amount and method of calculating, the person to whom fee is payable, description of the services or goods, and details of when a refund may be payable. The agency/employment business must also give further notice of the introduction or variation in those fees.

If an agency/employment business offers any gift or benefit to work-seekers to encourage them to use its services, it must provide details of the terms under which that gift or benefit is offered.

### **Requirement to obtain agreement to terms with work-seekers – regulation 14**

Before the agency/employment business first provides work-finding services, it must agree with the work-seeker the terms that will apply. These include:

- (a) (a) whether the service provided will be as an agency or employment business;
- (b) (b) the type of work that the employment agency or business will find or seek to find for the work-seeker;
- (c) (c) the content of the terms agreed (see note on regulations 15 & 16);

Unless the work-seeker has been given a written statement of particulars of employment in accordance with Part 1 of the Employment Rights Act 1996, all terms of the agreement should be recorded in a single document, if possible. (**Note:** if a number of documents record the terms, they should be retained together). Copies of all those documents must be given to the work-seeker before the work-finding services begin.

The terms set out in the document cannot be varied without the agreement of the work-seeker to whom they relate. If the parties agree to any such variation, the agency/employment business must, within five business days of the date of that agreement, give the work-seeker a single document setting out the terms as agreed to be altered and the date those changes will take effect.

The agency/employment business must not make the continued provision of any of its services, conditional on the work-seeker agreeing to accept any such variation. Regulation 14 does not apply where the only service provided by the agency is the inclusion of the work-seeker's details in a publication.

Where an agency is to provide the work-seeker with work-finding services for which it is allowed to charge a fee in accordance with regulation 26, it additionally needs to agree the terms set out in regulation 16. See below.

### **Content of terms with work-seekers: Employment businesses – regulation 15**

The terms that must be agreed in accordance with regulation 14 include:

- (a) (a) if the work-seeker is to be employed by the employment business under a contract of service, or for services, or an apprenticeship, and the terms and conditions to apply;
- (b) (b) an undertaking to pay the work-seeker for any work carried out;
- (c) (c) the length of notice of termination the work-seeker is required to give and entitled to receive in respect of the assignments;
- (d) (d) either the work-seeker's pay rate, or the minimum rate to be expected;
- (e) (e) the intervals at which the earnings will be paid; and
- (f) (f) details of any entitlement to paid holidays.

### **Content of terms with work-seekers: Agencies – regulation 16**

For an agency which is permitted by regulation 26(1) (see page 16) to charge the work-seeker a fee, the terms covered by regulation 14 must include information stating:

- (a) (a) work-finding services to be provided;
- (b) (b) agency's authority and terms (in accordance with regulation 11) to act for the work-seeker and, if it is entitled to represent the work-seeker in negotiations with hirers;
- (c) (c) if the agency is authorised to receive money on behalf of the work-seeker;
- (d) (d) details of any fee to be charged to the work-seeker, including the amount or method of its calculation, the work-finding service it relates to, the circumstances of any refund, or a statement if no refund is payable; the method of payment of the fee;
- (e) (e) and (f) length of any notice of termination the work-seeker is required to give, or entitled to receive.

### **Requirement to obtain agreement to terms with hirers – regulation 17**

Apart from the provision of information in a publication, before providing services to a hirer, the agency/employment business and the hirer must agree the terms that will apply, including information on:

- (a) (a) whether the service will be as an agency or employment business;
- (b) (b) any fee payable by the hirer, the amount or method of its calculation, and the circumstances of any refund, or a statement if no refund is payable;
- (c) (c) procedure to be followed if the work-seeker supplied by the employment business proves unsatisfactory;
- (d) (d) agency's authority and terms (in accordance with regulation 11), if any, it has to represent the hirer in negotiations with work-seekers.

All the terms must be recorded in a single document. (**Note:** If the terms comprise more than one item, they should be retained as a single document). If the hirer does not have a copy of the document, or details of any variation of the terms, the agency/employment business should provide a copy of the relevant document as soon as practicable.

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

## Information to be obtained from a hirer – regulation 18

To be able to select a suitable work-seeker, an agency/employment business must obtain information from the hirer. The details required include:

- (a) (a) hirer's identity and nature of the business carried out;
- (b) (b) date of commencement and duration of the work;
- (c) (c) position, type of work, location, hours of work, and any risks to health or safety the hirer is aware of and the steps taken to prevent them;
- (d) (d) experience, training, qualifications and any authorisation the hirer believes are necessary, or which are required by law, or by any professional body;
- (e) (e) any expenses payable to the work-seeker, and where an agency is providing the services, the minimum pay rate and other benefits offered, when payments will be made, and, if appropriate, the length of notice which the work-seeker would be entitled to receive or required to give.

## Confirmation to be obtained about a work-seeker – regulation 19

Before introducing or supplying a work-seeker to a hirer, an agency/employment business must confirm:

the work-seeker's identity; that he/she has the necessary experience, training, qualifications and any authorisation required by the hirer, law or any professional body to carry out the work; and that the work-seeker is willing to work in the position to be filled.

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

Before introducing or supplying a work-seeker to a hirer, the agency/employment business must have taken all reasonable steps to ensure that both the work-seeker and hirer are aware of any requirements, by law or a professional body, which must be satisfied by the hirer or work-seeker for the work-seeker to carry out the work.

In addition to any requirement under health and safety legislation, the agency/employment business must make all reasonable enquiries to ensure that the interests of the work-seeker or hirer would not be harmed if the work-seeker were to carry out the work.

If an employment business receives information which gives it reasonable grounds to believe that the work-seeker ***is unsuitable*** to work for the hirer, it must without delay inform the hirer of that information and end the supply of that work-seeker. However, if that information indicated that the work-seeker ***may be unsuitable***, the employment business must without delay inform the hirer of that information and start further enquiries to check the work-seeker's suitability. It should inform the hirer of the further enquiries and of any further information received. If those further enquiries give reasonable grounds for believing that the work-seeker is unsuitable, the employment business must, without delay, inform the hirer and end the supply.

Where an agency has introduced a work-seeker to a hirer, and receives information, within 3 months from the date of that worker's introduction, indicating that the work-seeker is or may be unsuitable for the position in which he/she is employed, it must inform the hirer without delay.

"Without delay" means on the same day, or where that is not reasonably practicable, on the next business day.

## Provision of information to work-seekers and hirers – regulation 21

When an agency/employment business submits a work-seeker to a hirer, it must provide (orally or otherwise) the hirer with all information about that work-seeker it was required to obtain by regulation 19 (see above). An employment business must include information on whether the work-seeker will be employed under a contract of service, for services, or an apprenticeship.

The agency/employment business must also give (orally or otherwise) to the work-seeker, at that time, information about the hirer it was required to obtain by regulation 18 (see page 12). An employment business that had not already agreed a pay rate must inform the work-seeker of the rate it will pay him to work in that position.

If the agency/employment business had not provided any of that information in paper form or by electronic means at the time the work-seeker was proposed to the hirer, the agency/employment business must do so before the end of the third business day following the day on which the information was given to the hirer or work-seeker.

Unless the work-seeker or hirer requests otherwise, these provisions do not apply if the work-seeker is to be introduced or supplied to work in the same position with that hirer that he/she had worked in within the previous 5 business days and the only new details concern the dates the work is to begin and end.

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

Regulations 18-21 (see pages 12 & 13) set out the requirements that an agency or employment business must follow when introducing a work-seeker to a hirer. Regulation 22 places further obligations where the work-seeker is required to possess

qualifications or authorisation by law or a professional body to work in a particular job; if the position involves working with young people, or caring for the elderly, infirm, or any other circumstances needing care or attention.

The additional obligations require the agency/employment business to obtain, and to offer to the hirer: copies of the work-seeker's relevant qualifications or authorisations; two references from persons, not related to the work-seeker, who have agreed that they can be disclosed to the hirer; and, where the work-seeker is to work with vulnerable persons, the agency/employment business has taken all reasonable steps to confirm that the work-seeker is not unsuitable for the work. We would expect that, when complying with this regulation, employment agencies or employment businesses introducing or supplying work-seekers to be employed as nannies, babysitters or other childcare workers, would **normally** have undertaken a Criminal Records Bureau check for those work-seekers.

If an agency/employment business has taken all reasonable steps to obtain two references but been unable to do so, it should comply with those requirements as far as it is able, inform the hirer that it is unable to comply fully and give details of the efforts taken to attempt to comply.

## **SPECIAL SITUATIONS**

### **Situations where more than one agency or employment business is involved – regulation 23**

Where an agency or employment business agrees with another for the provision of work-finding services, it must make enquiries and establish that the other is suitable to act as an agency/ employment business. Both must agree whether they are to act as an agency or employment business.

If one agency (the first agency) is permitted by regulation 26 (see page 16) to charge the work-seeker a fee, it must confirm that the hirer has been informed that any payment due to the work-seeker must be paid to the work-seeker or to that agency. If both agencies agree that the second agency may receive that payment, the second agency must pass that money to the first agency within 10 days of receipt; and, provided the appropriate legislation covering the agreement between the two agencies does not prevent it, they have agreed that the work-seeker may take legal action against the second agency, if it were to fail to pass on any money due to the work-seeker. The agreement between the two agencies must be recorded in paper or electronic form.

The first agency/employment business cannot sub-contract any of its responsibilities under the contract with a work-seeker or hirer to another agency or employment business unless it has the prior consent of that work-seeker or hirer; the terms to be sub-contracted are recorded in a single document, and the first agency/employment business has given the work-seeker or hirer a copy of that document.

### **Situations where work-seekers are provided with travel or required to live away from home – regulation 24**

An agency/employment business cannot arrange for an au pair to be employed, if the au pair is required to repay the agency/employment business the fare between the au pair's home and place of work out of the au pair's earnings.

Apart from where the work-seeker is to be employed by the hirer under a contract of employment, the agency/employment business must not arrange for the work-seeker to take up employment with the hirer, if the work-seeker must live away from home. However, there are certain exceptions to this rule – where the agency/employment business has taken all reasonable steps to ensure that suitable accommodation will be available during the employment; the work-seeker has details of the accommodation available, including costs; and arrangements have been made for travel to the accommodation.

In addition, where the worker is not the employee of the hirer, or is under 18 years of age, and the agency/employment business has arranged free transport or payment of the worker's fares, when the work ends, or does not start, the agency/employment business must either arrange free travel for the worker's return journey or pay the return fare, or obtain an undertaking from the hirer to make those arrangements. However, if the hirer does not comply with his undertaking, the agency/employment business must either arrange free travel for the return journey or pay the fare.

Where the work-seeker is looking for employment as an au pair or in private domestic service, the agency/employment business must ensure that, if the work-seeker requests any reasonable information about a particular vacancy, the information is given.

An agency/employment business cannot introduce or supply a worker under 18 years of age, where the job requires him/her to live away from home, unless the parent's or guardian's consent has been given. However, this provision does not apply where a licence is required for that worker to travel abroad to perform for profit.

If the work-seeker is to be found work, which requires him to be loaned money, either by the agency/employment business or hirer, to pay for travel or other expenses, the sum to be repaid cannot be greater than the amount of the original loan. The agency/employment business must provide the work-seeker with all details it has of the terms of the loan and the repayment.

## **CLIENT ACCOUNTS AND CHARGES TO WORK-SEEKERS**

### **Client accounts – regulation 25**

An agency can only request or receive money on behalf of a worker, who is employed in an occupation in which a fee can be charged, where that money is earnings from work and the agency maintains client accounts. If an agency receives any money on behalf of a worker it is not permitted to accept, it must pay the money to that worker, to an agency allowed to receive the money, or to the person from whom it was received, within two business days of receipt.

All money received by the agency on behalf of the worker, other than cash paid to the worker within 2 business days of receipt; cheques and banker's drafts payable to the worker must be paid into a client account within two business days of receipt. All cheques and banker's drafts must be sent to the worker to whom they are payable within two business days of receipt.

When an agency makes a payment to a worker in accordance with these regulations, it must give the worker a statement setting out details of when the payment was received, from whom it was received, the work to which it relates, and any fees or deductions made by the agency. All payments made by the agency to the worker or into a client account, apart from any deductions required by law, must be made without deductions. However, an agency, which is allowed to charge the worker a fee, can deduct such a sum from any money due to the worker, provided that worker's contract agrees that such a deduction may be made. An agency that receives money on behalf of a worker which is paid into a client account may only be held for 10 days, or for any longer period as requested by the worker.

If a worker requests that a payment be made from the money held by the agency on his behalf, the agency must make that payment within two business days of receiving the request. Where an agency holds money on behalf of a worker for more than 30 days from the date it was received, it must, by the end of the thirty second day, provide the worker with a statements setting out the amount held at the close of the thirtieth day. It must continue to provide such statements at intervals of no more than thirty days until all the money held has been paid to the worker. Where a cheque made payable to the agency is received by the agency on behalf of a worker, the periods of 10 and 30 days start with the day on which the cheque is cleared.

All invoices issued by an agency in respect of work carried out by a worker must state that, if payment is to be made by cheque or banker's draft, the cheque or draft must be made out to the agency's client account.

An agency cannot request or receive a hirer's deposit, unless it would be money that the agency was entitled to request or receive on behalf of a work-seeker, if it became payable to the work-seeker. Any such deposit received by the agency must be paid into a client account within two business days of receipt. Where an agency receives a hirer's deposit that it is not entitled to receive, it must pay that money to an agency allowed to receive such a payment, or to the person from whom it was received, within two business days of receipt. Any hirer's deposit received by the agency is held in trust for the work-seeker until it becomes payable to him or the hirer as provided under the terms of any contract between the work-seeker and the hirer. Where a worker becomes entitled under the terms of his contract with the hirer to any deposit paid to the agency, for the provisions of these Regulations, the agency will be regarded as having received that money on the day on which the worker became entitled to it.

### **Circumstances in which fees may be charged to work-seekers – regulation 26**

The restriction on charging fees to work-seekers does not apply to any fee charged by an agency for providing work-finding services to a work-seeker employed in occupations within entertainment, modelling etc sectors, listed in Schedule 3 of the Conduct Regulations. Such a fee can only be charged from the worker's earnings in any employment which the agency has found for him. The restriction on charging fees will also not apply to a charge for work-finding services made by an agency to a work-seeker that is a company and the employment is in an occupation **not** covered by Schedule 3. However, the agency cannot make a charge to a worker where it, or any person connected with it, charges a fee to the hirer for supplying or introducing that worker to him. In addition, where the agency is connected to the hirer, such a charge can only be made if, before providing the service to which the charge is to be made, the agency informs the work-seeker of that connection.

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

Such a fee may only be charged where the publication is the only work-finding service provided by the agency, or 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 that work-seeker's details in the publication. In addition to other requirements in these Regulations which may apply, 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.

There are no restrictions on charging fees to work-seekers for the purchase of or subscription to a publication which contains information about employers 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 he has purchased or subscribed to it. However, if the publication is in electronic form, the work-seeker must be given access to a current edition.

## **MISCELLANEOUS**

### **Advertisements – regulation 27**

Every advertisement made by an agency/employment business must include the agency /employment business's full name, either audibly or in writing (depending on the media used) and stating if it is acting as an agency or an employment business. The agency/employment business must not place an advertisement, which includes details of positions unless it has information about all the specific positions included in the advertisement; and has been given authority by the hirer concerned to find work-seekers for the position advertised. Where the advertisement gives rates of pay, it must also state the nature of the work, its location and the minimum experience, training or qualifications which the work-seeker needs to have.

### **Confidentiality – regulation 28**

An agency/employment business must not disclose any information about a work-seeker, including to his current employer, without his 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/employment business is allowed under the 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.

### **Records – regulation 29**

An agency/employment business must keep sufficient records to show that it has complied with all the provisions of the Employment Agencies Act 1973 and the Conduct Regulations 2003. This includes details relating to applications received from work-seekers, hirers, and its dealings with other agencies and employment businesses. These records must be kept for at least one year after their creation and, in the case of the details in respect of applications from work-seekers or hirers; they must be retained for at least one year after the date that the agency/employment business last provided it services to the applicant. However, an agency/employment business is not required to keep details of a work-seeker or hirer if it takes no action in respect of that application.

The agency/employment business may either keep those records at the premises where it trades, or elsewhere. If not retained on its premises, they must be readily accessible by the agency/employment business and can be delivered to the trading premises to which they relate within two business days of being requested. The records can be kept in electronic form provided they can be reproduced in a legible form.

These record-keeping requirements do not apply to the retention of client account records for modelling and entertainment agencies, which must be kept for a minimum of six years. The requirements for those records are set out in paragraph 12 of Schedule 2 of the Conduct Regulations (see page 24).

### **Civil liability – regulation 30**

If an employment agency or employment business fails to comply with any of the provisions of either the 1973 Act or the Conduct Regulations, which causes damage or loss to another person, that person can sue the agency or employment business for damages arising from a breach of the legislation. 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).

### **Effect of prohibited or unenforceable term and recoverability of monies – regulation 31**

Where an employment agency's or employment business' contracts contain any term which is either prohibited or made unenforceable by the Conduct Regulations 2003, the remainder of the contract may continue to apply to the parties concerned, if the contract is capable of continuing in existence without that term. If a hirer has paid any money to an employment business under a contractual term, which is unenforceable under regulation 10 (restriction on charges to hirers), the hirer is entitled to recover that money.

### **Application of these Regulations to work-seekers which are incorporated – regulation 32**

With effect from 6 July 2004 these Regulations apply to worker-seekers who are incorporated. Therefore, any reference to a work-seeker in the Regulations also includes a work-seeker that is a limited company. Consequently, certain regulations are modified where the work-seeker is a limited company. These require that where there is a reference to the "work-seeker" in the regulations, it includes a limited company contractor and, where appropriate, the person who is, or would be, supplied by the work-seeker to carry out the work.

However, the Regulations provide that limited companies, and those persons whose services they supply, can agree not to be covered. If they do exercise the choice not to be covered, then both the limited company, and the worker to be supplied, must give notice to the agency or employment business of the decision, before they are either introduced or supplied to a hirer. A person supplied to carry out the work by the work-seeker, which is a company, can withdraw that notice to the employment business or agency by giving notice of its withdrawal. However, the notice of the withdrawal will not be effective until after the limited company contractor/person working through the limited company contractor stops working in that position.

The opt out provisions do not apply to a person, who is a limited company contractor, or is supplied by the limited company contractor to attend or care for any person either under 18 years of age or, by virtue of age, infirmity or any other circumstances, is in need of care and attention. An agency/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 these Regulations.

This particular regulation came into force on the 6 July 2004.

### **Electronic and other communications – regulation 33**

Unless expressly stated in the Regulations, any requirement to notify a person of any matter, to give or send a document, to provide a person (hirer or work-seeker) with information or make enquiries and receive responses, can be discharged in writing, either on paper or by electronic means.

## **SCHEDULE 1 TRANSITIONAL AND SAVING PROVISIONS**

The Transitional and Saving Provisions describe how the Regulations applied to a contract in existence before these Regulations came into force.

### **Interpretation**

“**Existing contract**” is one entered into between an agency/employment business and either a work-seeker or hirer before the date on which these Regulations came into force, i.e. 6 April 2004 “**Ongoing supply**” is the supply of a temporary worker to a hirer by an employment business, which was in progress at the date these Regulations came into force, and continued after that date. “**Transitional period**” is the period of 3 months from 6 April 2004 to 5 July 2004. There was no transitional period for regulations 26(7) and 32, which took effect on 6 July 2004.

### **Application to existing contracts**

The Regulations apply to all existing contracts from the date the Regulations came into force, apart from the following, which did not apply to existing contracts during the transitional period:

**Regulation 5** - Restriction on requiring work-seekers to use additional services;

**Regulation 6(1)** - Restriction on detrimental action relating to work-seekers working elsewhere;

**Regulation 10** - Restriction on charges to hirers;

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

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

**Regulation 28(2)** - Prohibition on disclosure of information to current employer.

### **Provisions for regulation 10**

After the end of the transitional period (5 July 2004) regulation 10 did not apply to any right which had accrued on or before that date under the terms of an existing contract, which is described in that regulation.

From 6 July 2004, under certain circumstances, an existing contract between an employment business and a hirer, which does not provide for an extension of the hire period as required under regulation 10, may be regarded as having satisfied that requirement. That requirement would be satisfied where the employment business informed the hirer that, instead of paying a transfer fee, the hirer could employ the work-seeker for a specified hire period. The hirer must have been notified of this choice after the Regulations took effect but before the worker began employment directly with the hirer, or was supplied through another employment business.

### **Savings in respect of existing contracts**

As some provisions in the Regulations did not apply during the transitional period, the following provisions of the Conduct of Employment Agencies and Employment Businesses Regulations 1976 remained in force until 6 July 2004 in respect of existing contracts:

Regulation 2(2) – non-disclosure of information;

Regulation 4(5) – provision of services to a worker conditional upon using other services provided by the agent;

Regulation 9(9) - prohibition on detrimental treatment for termination of contract by worker); and

Regulation 9(10) – prohibition on making remuneration conditional on receipt of payment from the hirer).

In addition, the Employment Agencies Act 1973 (Charging Fees to Workers) Regulations 1976 remained in force in respect of any existing contract during the transitional period.

### **Ongoing supplies and first occasions of supply**

The following regulations only applied to the supply of workers by an employment business which began after the Regulations came into force:

Regulation 7 - Restriction on providing work-seekers in industrial disputes;

Regulation 18 - Information to be obtained from a hirer;

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

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

Regulation 22 - Additional requirements in respect of professional qualifications or workers working with vulnerable persons.

Certain of the 1976 Conduct Regulations remained in force after 6 April 2004 for an “ongoing supply”. These were: regulation 9(6)(b) - the requirement to give a worker a written statement incorporating any changes to terms and conditions of employment without delay; and regulation 9(11) - the prohibition on supplying workers to replace those in industrial disputes.

In addition, where the terms of an existing contract with a hirer were varied, the agency or employment business, before they provided services to the hirer after the variation had been agreed, must comply with regulation 17 - the requirements to obtain agreement to such terms with the hirer.

### **Restriction on paying work-seekers’ remuneration and client accounts**

**Regulation 8** - the restriction on agencies paying workers who have been introduced or supplied to a client did not apply during the transitional period.

**Regulation 25** did not apply during the transitional period, if an agency was not required to maintain a client account before the Regulations came into force. In addition, regulation 7 and Schedule 2 to the 1976 Regulations continued to apply during the transitional period.

Where these special provisions for regulation 25 did not have effect, **regulation 25 and Schedule 2** applied to all “relevant money” held by an agency from the date these Regulations came into force. If regulation 25 or Schedule 2 required the agency to take action with the relevant money it held within a specified period, and the event which gave rise to that requirement occurred before the Regulations came into force, that event should have been regarded as having taken place on the date these Regulations came into force.

**Regulation 25 and Schedule 2** applied after the end of the transitional period in respect of relevant money held by an agency, for which it received no written request from a work-seeker to maintain a client account; and where there is a requirement in regulation 25 or Schedule 2 for the agency to take action within a certain period, and the event which required that action to be taken occurred before the end of the transitional period; that event is regarded as having taken place on the first day after the end of the transitional period.

“**Relevant money**” is money held by an agency immediately before the date these Regulations came into force or immediately before the day the transitional period ended and in respect of which regulation 25 or Schedule 2 required an agency to take action.

### **Miscellaneous Savings**

The following provisions of the Conduct of Employment Agencies and Employment Businesses Regulations 1976 remained in force if the event requiring action to be taken under the 1976 Regulations occurred before the Conduct Regulations 2003 came into force:

Regulations 8 & 12 - record keeping;

Regulations 3(4), 6(1), 6(3), 6(5)(b), 7(3), 9(6)(c), 10(4), 11(1), 11(5)(b) - the requirement to keep copies of advertisements, written statements and documents;

Regulation 5(4) - the duty to loan the return fare to a young person; and

Regulation 11(3) – responsibility 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 to pay the worker’s return fare.

## SCHEDULE 2 CLIENT ACCOUNTS

### Interpretation

**Accounts, books, ledgers and records** 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”** as defined in section 224 of the Companies Act 1985.

**Client** is any person for whom the agency acts and operates an account, which it uses to hold that person’s money; also may a hirer from whom the agency receives a deposit.

**Client’s money** is money received by the agency on behalf of a work-seeker (including any advance against payment for work to be done by the work-seeker, where that advance is not repayable to the hirer) and hirer’s deposits. However, it does not include money to which the agency is the only person entitled.

### Maintenance of client accounts

An agency can have one or as many client accounts, as it considers necessary. Every 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.

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 and any money that the agency is entitled to split but has not done so.

There are restrictions on how money can be withdrawn from a client account, when meeting the provisions of this Schedule. For example, that money can only be drawn from the account by a cheque or electronic transfer in the agency’s name or by transfer to an account in a credit institution in the name of the agency, but not to a client account. Only money permitted to be withdrawn can be drawn on a client account. In addition, any withdrawal can only be carried out by an authorised signatory known to the credit institution holding that account.

An agency can, where practicable, split the money it receives, including client’s money, but each amount must be treated as a separate sum; or, if the agent does not split the money, it must be paid into a client account within two business days of the date it was received.

The only money that an agency can pay into a client account is defined by regulation 25(4) and (14) or by this Schedule. Money paid into the client account, which does not meet these requirements, must be withdrawn within two business days of the date on which the error was discovered and then be paid to the person to whom it belongs.

An agency can only withdraw from a client account money required to pay the client and any 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, money can be withdrawn from the client account to reimburse the agency for money spent on the client’s behalf at the client’s written request; for the agent’s fee or for a payment due to the agency from the client, in respect of any advance of earnings paid to the client by the agency.

Where the client has agreed in writing to such a deduction, the agency should, where appropriate, provide an invoice or other written statement.

Money can also be withdrawn to repay the money used to open or maintain the account or if the money has been split to pay the person entitled to it. Additionally, if the money has been wrongly put into the account, it can be withdrawn and any money required by law to be deducted from earnings before it is paid to the work-seeker. Such money can be withdrawn, provided that the amount to be withdrawn does not exceed the total amount held in that account for the client.

The transferring of money from one client account to another can only be carried out with the agreement 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.

### Accounts and records

Every agency is required to maintain sufficient accounts and records to show transactions relating to any clients’ money received by the agency and any other money paid into the client account. Additionally, the accounts must show those transactions for each client and that money must be distinguishable from any other monies held or paid for that client. The accounts should also show the current balance of each client’s account in the client’s ledger or should ensure that this can readily be obtained.

All transactions must be appropriately recorded in a client’s cash account or a client’s column of a cash account and in a client’s ledger or a client’s column of a ledger. No other transactions may be recorded in that account, ledger or columns. All other transactions should be recorded separately in whatever form the agency chooses to maintain (i.e. account, ledger or cash account column).

In addition to those accounts, ledgers and records, every agency must keep a record, and copies, of all invoices and statements in respect of payments made from the client's account. In keeping such records, the agency must distinguish between fees and expenditure, delivered or made by the agency to its clients.

Every agency must, within 21 days of the end of each calendar month 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 that calendar month; if there is any difference between these two balances, the agency must produce a statement explaining the cause; the agency must reconcile the cash account balances with the balance shown on statements and passbooks of all client accounts, and money held elsewhere, and any difference between the two must be explained; and finally, the agency should take appropriate action to rectify any differences found.

### **Inspection and report**

Every agency that is required to keep accounts and records as specified in this Schedule must arrange for them to be 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, within ten months of the end of the accounting period,. The agency must ensure that that person's rights and duties are set out in the letter of engagement. Details of the terms to be included are set out in paragraph 10(2) of this Schedule. The agency must undertake to provide the all the necessary accounts and supply whatever additional information may be requested by that person.

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.

### **Accounting period**

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, its accounting reference date, whichever is the sooner. However, if the client account(s) 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.

### **Preservation of client account records**

Agencies that are obliged to maintain client account(s) under these Regulations must keep copies of all accounts, books, ledgers and records; copies of all invoices and statements issued to clients and all statements printed and issued by the credit institution, which holds the relevant client account; records falling under the reconciliations required under this Schedule and reports to the agency by accountants. 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.

### **Interest**

The agency is required 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**

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

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

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

The details listed in these Schedules are straightforward and do not require further explanation.

## **TERMS AND CONDITIONS OF EMPLOYMENT – The Employment Relations Act 1999 (Commencement No9) Order 2003**

With effect from 6 April 2004 parts of the Employment Relations Act 1999 amended specific sections of the Employment Agencies Act 1973. These included:

- The definition of an employment agency was amended to extend coverage to work-seekers who are “persons”. The effect was to include work-seekers who are companies.
- The restriction on an agency/employment business charging work-seekers a fee has been extended to cover the situation where it “requests” a fee.
- Employment Agency Standards Inspectors have been given additional powers to copy records and other documents and to enter any relevant premises.

## APPENDIX – other legal requirements

Many additional legal requirements in legislation other than the 1973 Act and the Conduct Regulations apply to employment agencies and employment businesses, either specifically or as they apply to businesses or employers generally. These include the specific obligations placed on employment agencies and employment businesses by legislation relating to discrimination in employment described below.

**Sex Discrimination Act 1975** (as amended). The 1975 Act makes it unlawful for an agency or employment business to discriminate against a person on the grounds of sex or marriage in relation to the provisions of its services. The Equal Opportunities Commission has produced a Code of Practice on equal opportunity policies, procedures and practices in employment, which is available from the Equal Opportunities Commission, Overseas House, Quay Street, Manchester, M3 3HN (tel 0845 601 5901). The Code is also available from [www.eoc.org.uk](http://www.eoc.org.uk)

**Race Relations Act 1976** (as amended 2000). The legislation makes it unlawful for an agency to discriminate against a person on the grounds of colour, race, nationality or ethnic or national origins in relation to the provisions of its services. The Commission for Racial Equality's Race Relations Code of Practice for the elimination of racial discrimination and the promotion of equal opportunity in employment includes responsibilities and recommendations for agencies and employment businesses. Copies are available from the Commission for Racial Equality, St Dunstan's House, 201-211 Borough High Street, London, SE1 1GZ (tel 0207 939 0000) and from [www.cre.gov.uk](http://www.cre.gov.uk)

**Trade Union and Labour Relations (Consolidation) Act 1992**. Under this Act it is generally unlawful to refuse access to employment on grounds related to trade union membership. In particular, the 1992 Act makes it unlawful for employment agencies or employment businesses to refuse to provide their normal service to an applicant because of his trade union membership or non-membership. Guidance booklet PL871 (REV 5) is obtainable in electronic form from [www.dti.gov.uk/er](http://www.dti.gov.uk/er)

**The Disability Discrimination Act 1995** (DDA) makes it unlawful for employers to discriminate against disabled employees or job applicants. Employers may have to make reasonable adjustments to employment arrangements and the workplace. Disabled people who have been discriminated against can complain to an employment tribunal. Further details are contained in booklet DL170 DDA: What employers need to know, which is available from the Disability Rights Commission's (DRC) helpline (tel 08457 622633 or textphone 08457 622644). Email [enquiry@drc-gb.org](mailto:enquiry@drc-gb.org) or website [www.drc-gb.org](http://www.drc-gb.org)

**Employment Equality (Sexual Orientation) Regulations 2003 and Employment Equality (Religion or Beliefs) Regulations 2003** outlaw discrimination in employment and vocational training on the grounds of sexual orientation and harassment on the grounds of religion or belief in the workplace respectively. Guidance can be obtained from ACAS or by visiting the DTI website.

The Government also intends to introduce legislation to outlaw age discrimination in employment and vocational training by October 2006.

## ***Other useful contacts***

**Advisory, Conciliation and Arbitration Service (ACAS)** provide impartial advice and information about employment matters including legal rights and duties. Some of the most frequently asked questions cover the following topics:

- Discipline and dismissal
- Notice rights
- Rights to holiday and holiday pay
- Family friendly policies
- Redundancy
- Pay slips (workers are entitled to itemised pay slips)
- Unlawful deductions from wages

ACAS – National helpline **08457 47 47 47**. Helpline for textphone **08456 06 16 00**.

Website [www.acas.org.uk/](http://www.acas.org.uk/)

**Health & Safety Executive.** All enquiries relating to the health & safety responsibilities of agencies, employment businesses and hirers should be addressed to the Health & Safety Executive. The public infoline number is **08701 545500** and their website address is [www.hse.gov.uk](http://www.hse.gov.uk)

**National Minimum Wage.** Agency workers should receive at least the national minimum wage. Helpline number is **0845 6000 678** and further details can also be found at [www.dti.gov.uk/nmw](http://www.dti.gov.uk/nmw)

**Working Time Regulations** affect agency workers. All enquiries should be directed to ACAS (See above for contact details) .

**Information Commissioner's Office** promotes good information handling practice and enforces data protection and freedom of information legislation. The Data Protection helpline can be contacted at **01625 545 745**. For general enquiries contact **01625 545 700**. The website address is [www.informationcommissioner.gov.uk](http://www.informationcommissioner.gov.uk)

**Statutory Sick Pay.** All enquiries should be directed to your local Inland Revenue office. The Inland Revenue website address is [www.inlandrevenue.gov.uk](http://www.inlandrevenue.gov.uk)

**Businesslink** is an organisation managed by the DTI which offers practical help and advice for business. Their helpline number is 0845 600 9006 and the website address is [www.businesslink.gov.uk](http://www.businesslink.gov.uk)

# DEPARTMENT OF TRADE AND INDUSTRY – EMPLOYMENT AGENCY STANDARDS INSPECTORATE

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Department of Trade and Industry

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## **Helpline**

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