
DRAFT STATUTORY INSTRUMENTS

2003 No.

**The Conduct of Employment Agencies and
Employment Businesses Regulations 2003**

PART II

GENERAL OBLIGATIONS

Restriction on requiring work-seekers to use additional services

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

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

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

Restriction on detrimental action relating to work-seekers working elsewhere

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

- (a) subject or threaten to subject a relevant work-seeker to any detriment on the ground that—
 - (i) the relevant work-seeker has terminated or given notice to terminate any contract between the work-seeker and the agency or employment business, or
 - (ii) in the case of an employment business, the relevant work-seeker has taken up or proposes to take up employment with any other person; or
- (b) require the relevant work-seeker to notify the agency or the employment business, or any person with whom it is connected, of the identity of any future employer of the relevant work-seeker.

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

- (a) the loss of any benefits to which the relevant work-seeker might have become entitled had he not terminated the contract;
- (b) the recovery of losses incurred by an agency or employment business as a result of the failure of the relevant work-seeker to perform work he has agreed to perform; or
- (c) a requirement in a contract with the agency or employment business for the work-seeker to give a period of notice which is reasonable to terminate the contract.

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

Restriction on providing work-seekers in industrial disputes

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

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

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

(2) Paragraph (1) shall not apply if, in relation to the first worker, the strike or other industrial action in question is an unofficial strike or other unofficial industrial action for the purposes of section 237 of the Trade Union and Labour Relations (Consolidation) Act 1992⁽¹⁾.

Restriction on paying work-seekers' remuneration

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

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

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

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

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

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

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

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

Restriction on charges to hirers

10.—(1) Any term of a contract between an employment business and a hirer which is contingent on a work-seeker taking up employment with the hirer or working for the hirer pursuant to being supplied by another employment business is unenforceable by the employment business in relation to that work-seeker unless the contract provides that instead of a transfer fee the hirer may by notice

(1) 1992 c. 52; section 237 was inserted by the Trade Union Reform and Employment Rights Act 1993 (c. 19), section 49(2) and Schedule 8, paragraph 76, and amended by the Employment Rights Act 1996 (c. 18), Schedule 1, paragraph 56(1), (15) and the Employment Relations Act 1999 (c. 26), section 9 and Schedule 4, Part III, paragraphs 1, 2(a) and (b).

to the employment business elect for a hire period of such length as is specified in the contract during which the work-seeker will be supplied to the hirer—

- (a) in a case where there has been no supply, on the terms specified in the contract; or
- (b) in any other case, on terms no less favourable to the hirer than those which applied immediately before the employment business received the notice.

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

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

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

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

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

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

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

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

(7) An employment business shall not—

- (a) seek to enforce against the hirer, or otherwise seek to give effect to, any term of a contract which is unenforceable by virtue of paragraph (1), (3) or (4); or
- (b) otherwise directly or indirectly request a payment to which by virtue of this regulation the employment business is not entitled.

Entering into a contract on behalf of a client

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

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

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

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

unless the requirements in paragraph (3) are satisfied.

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

- (a) the person for whom the agency acts has appointed the agency as his agent with authority to enter into the contract on his behalf; and
- (b) where the agency acts for the work-seeker, it is permitted by regulation 26(1) to charge a fee in relation to the introduction or supply to which the contract relates.

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

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

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

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

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

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