

Draft Regulations laid before Parliament under section 12(5) of the Employment Agencies Act 1973, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2010 No. 0000

EMPLOYMENT AGENCIES, ETC.

**The Conduct of Employment Agencies and Employment
Businesses (Amendment) Regulations 2010**

Made - - - - 2010
Coming into force - - 1st October 2010

The Secretary of State, having consulted such bodies as appear to the Secretary of State representative of the interests concerned, makes the following Regulations in exercise of powers conferred by sections 5(1), 6(1) and 12(3) of the Employment Agencies Act 1973⁽¹⁾.

In accordance with section 12(5) of that Act a draft of these Regulations was laid before Parliament and approved by a resolution of each House of Parliament.

Citation and commencement

1. These Regulations may be cited as the Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2010 and shall come into force on 1st October 2010.

Amendments to the Conduct of Employment Agencies and Employment Businesses Regulations 2003

2. The Conduct of Employment Agencies and Employment Businesses Regulations 2003⁽²⁾ are amended as set out in regulations 3 to 14.

Amendment to regulation 2

3. In regulation 2 (interpretation) after the definition of “publication” insert—

““vulnerable person” means any person who by reason of age, infirmity, illness, disability or any other circumstance is in need of care or attention, and includes any person under the age of eighteen;”.

(1) 1973 c.35. Section 6(1) was substituted by the Employment Relations Act 1999 (c.26), section 31 and Schedule 7, paragraphs 1 and 3.
(2) S.I. 2003/3319, amended by S.I. 2007/3575.

Amendment to regulation 5

4. In regulation 5 (restriction on use of additional services) after paragraph (2) insert—

“(3) In addition, where the work-seeker is seeking employment as an actor, background artist, dancer, extra, musician, singer or other performer or as a photographic or fashion model and that work-seeker uses a service, for which the Act does not prohibit the charging of a fee, which includes the production of a photographic image or audio or video recording of the work-seeker, an agency or employment business providing or making provision for such service shall ensure that, for 30 days from the date of the agency or employment business entering into a contract for such a service whether written or oral—

- (a) the agency or the employment business shall not charge a fee to a work-seeker for that part of the service which consists of providing or making provision for a photographic or audio or video recording of the work-seeker; and
- (b) the work-seeker shall be entitled without detriment or penalty to cancel or withdraw from any contract with the agency or employment business for such a service with immediate effect by informing the agency or employment business of cancellation or withdrawal and where the work-seeker informs the agency or employment business of cancellation or withdrawal the work-seeker has no obligation to make any payment under the contract.

(4) Paragraphs (2) and (3) do not apply to a service for which a fee may be charged by virtue of regulation 26(1).”.

Amendment to regulation 13

5. In paragraph (1)(b)(iii) of regulation 13 (notification of charges and the terms of offers) for the words “and the notice period required” substitute “and, as the case may be, of the notice period required under paragraph (2) of regulation 5 or of the period during which the right can be exercised under paragraph (3) of that regulation”.

Amendment to regulation 14

6. For regulation 14 (requirement to obtain agreement to terms with work-seekers) substitute—

“Requirement to obtain agreement to terms with work-seekers: Employment Businesses

14.—(1) Before first providing any work-finding services to a work-seeker, an employment business shall obtain the agreement of the work-seeker to the terms which apply or will apply as between the employment business and the work-seeker including—

- (a) a statement that the employment business will operate as an employment business in relation to the work-seeker;
- (b) the type of work the employment business will find or seek to find for the work-seeker; and
- (c) the terms referred to in regulation 15.

(2) Subject to paragraph (3), an employment business shall ensure that—

- (a) all terms in respect of which the employment business has obtained the work-seeker’s agreement are recorded in a single document or, where this is not possible, in more than one document; and
- (b) copies of all such documents are given at the same time as each other by the employment business to the work-seeker who has agreed such documents, before

the employment business provides any services to the work-seeker to which the terms contained in such documents relate.

(3) Paragraph (2) shall not apply in the case of an employment business where the work-seeker has been given a written statement of particulars of employment in accordance with Part I of the Employment Rights Act 1996.

(4) An employment business may not vary any terms set out in a document issued in accordance with paragraph (2), unless the work-seeker agrees to the variation.

(5) If the employment business and the work-seeker agree to any variation in the terms set out in the documents referred to in paragraph (2), the employment business shall as soon as possible, and in any event no later than the end of the fifth business day following the day on which the employment business and the work-seeker agree to the variation, give to the work-seeker a single document containing details of the terms as agreed to be varied and stating the date on or after which it is agreed that the varied terms are to take effect.

(6) An employment business may not make the continued provision of any services by it to a work-seeker conditional on the agreement by the work-seeker to any such variation.”.

Amendment to regulation 16

7. For regulation 16 (content of terms with work-seekers: Agencies), substitute—

“Requirement to obtain agreement to terms with work-seekers and content of terms with work-seekers: Agencies

16.—(1) Before first providing any work-finding services to a work-seeker, for which it is permitted by regulation 26(1) to charge a fee, an agency shall obtain the agreement of the work-seeker to the terms which apply or will apply as between the agency and the work-seeker including—

- (a) details of the work-finding services to be provided by the agency;
- (b) details of the agency’s authority, if any, to act on behalf of the work-seeker, including whether, and if so, upon what terms it is (in accordance with regulation 11) authorised to enter into contracts with hirers on behalf of the work-seeker;
- (c) a statement as to whether the agency is authorised to receive money on behalf of the work-seeker;
- (d) details of any fee which may be payable by the work-seeker to the agency for work-finding services including—
 - (i) the amount or method of calculation of the fee,
 - (ii) a description of the particular work-finding service to which the fee relates,
 - (iii) the circumstances, if any, in which refunds or rebates are payable to the work-seeker, the scale of such refunds or rebates, and if no refunds or rebates are payable, a statement to that effect, and
 - (iv) the method of payment of the fee and, if the fee is to be deducted from the work-seeker’s earnings received by the agency, the circumstances in which it is to be so deducted;
- (e) a statement as to whether the work-seeker is required to give notice to terminate the contract between the work-seeker and the agency and, if so, a statement as to the length of the notice required; and

- (f) a statement as to whether the work-seeker is entitled to receive notice of termination of the contract between the work-seeker and the agency and, if so, a statement of the length of the notice.
- (2) In the case of an agency which is to provide the work-seeker with work-finding services to which regulation 26(5) applies, before first providing any such work-finding services to the work-seeker, the terms to be agreed, in addition to the terms in paragraph (1), are—
- (a) that an agency shall not charge a fee permitted under regulation 26(5) to the work-seeker until the period referred to, as the case may be, in sub-paragraph (d) or (e) of regulation 26(5), during which the work-seeker may withdraw or cancel, has elapsed;
 - (b) that the work-seeker has the right without detriment or penalty to cancel or withdraw from the contract with immediate effect by informing the agency of such cancellation or withdrawal during the time period referred to, as the case may be, in sub-paragraph (d) or (e) of regulation 26(5);
 - (c) that an agency shall not include information about the work-seeker in a publication until—
 - (i) where paragraph (5)(d) of regulation 26 applies, the period referred to in that paragraph has elapsed or,
 - (ii) where paragraph (5)(f) of regulation 26 applies, the latter of, the date on which the period referred to in that paragraph has elapsed or, following an objection, the date on which the reasonable requirements of the work-seeker have been addressed;
 - (d) in relation to a contract with a work-seeker seeking employment as an actor, background artist, dancer, extra, musician, singer or other performer, under which the agency proposes to include information about the work-seeker in a publication, that—
 - (i) the agency shall make a copy of the information available to the work-seeker;
 - (ii) at the same time, the agency shall inform the work-seeker of the right to object, its effect and the time limit for exercising that right; and
 - (iii) for the period referred to in paragraph (5)(f) of regulation 26, the work-seeker is entitled to object to any aspect of the information relating to the work-seeker by informing the agency of an objection;
 - (e) in a contract to which sub-paragraph (d) applies, that where the work-seeker informs the agency of an objection, the agency shall not charge a fee or include the information in a publication until the work-seeker's reasonable requirements have been addressed (even if addressing the requirements takes longer than the period referred to in paragraph (d));
 - (f) in a contract to which sub-paragraph (d) applies, that where an agency makes available to the work-seeker a copy of the information referred to in that paragraph—
 - (i) during the period referred to in paragraph (5)(e) of regulation 26, where the period referred to in paragraph (5)(f) of regulation 26 has elapsed without an objection or where the reasonable requirements of the work-seeker have been addressed, paragraph (5)(e) of regulation 26 continues to apply; or
 - (ii) after the period referred to in paragraph (5)(e) of regulation 26 has elapsed, paragraph (5)(f) of regulation 26 applies from the expiry of that period until

the latter of, the date on which the period referred to in paragraph (5)(f) of regulation 26 has elapsed or, following an objection, the date on which the reasonable requirements of the work-seeker have been addressed; and

- (g) an undertaking that the work-seeker is entitled to receive a full refund of the fees paid if the publication including, or proposed to include, the work-seeker's information is not produced and made available to potential hirers within 60 days from the date payment is made by the work-seeker.

(3) Any reference in paragraph (2) to the inclusion of information about a work-seeker in a publication, includes the inclusion of a photographic image or audio or video recording of the work-seeker in a publication.

(4) Paragraph (3) shall not be construed, when read with paragraph (2), as preventing an agency producing a photographic image or audio or video recording for the purpose of providing a copy of the image or recording to the work-seeker.”.

Amendment to regulation 17

8. For regulation 17 (requirement to obtain agreement to terms with hirers) substitute—

“Requirement for employment businesses to obtain agreement to terms with hirers

17.—(1) Before first providing services to a hirer, an employment business shall agree with the hirer the terms which apply or will apply between the employment business and the hirer, including—

- (a) a statement that the employment business will operate as an employment business in relation to the hirer;
- (b) details of any fee which may be payable by the hirer to the employment business including—
 - (i) the amount or method of calculation of such fee, and
 - (ii) the circumstances, if any, in which refunds or rebates are payable to the hirer, the scale of such refunds or rebates, and if no refunds or rebates are payable, a statement to that effect; and
- (c) details of the procedure to be followed if a work-seeker introduced or supplied to the hirer proves unsatisfactory.

(2) The employment business shall ensure that all of the terms are recorded in one or more documents and that, unless the hirer has a copy, a copy is sent to the hirer as soon as is reasonably practicable.

(3) If the employment business and the hirer agree to any variation in the terms set out in the document referred to in paragraph (2), the employment business shall, unless the hirer has a copy of that document, as soon as is reasonably practicable, give to the hirer a document containing details of the variation and stating the date on or after which it is agreed that the varied terms are to take effect.”.

Amendment to regulation 19

9. For regulation 19 (confirmation to be obtained about a work-seeker) substitute—

“Confirmation to be obtained about a work-seeker

19.—(1) An employment business may not introduce or supply a work-seeker to a hirer unless it has obtained confirmation—

- (a) of the identity of the work-seeker, and
 - (b) that the work-seeker has the experience, training, qualifications and any authorisation which the hirer considers are necessary, or which are required by law or by any professional body, to work in the position which the hirer seeks to fill.
- (2) An agency may not introduce or supply a work-seeker to a hirer with a view to the work-seeker taking up a position which involves working with, caring for or attending a vulnerable person, unless it has obtained confirmation—
- (a) of the identity of the work-seeker, and
 - (b) that the work-seeker has the experience, training, qualifications and any authorisation which the hirer considers are necessary, or which are required by law or by any professional body, to work in the position which the hirer seeks to fill.
- (3) Neither an agency nor an employment business may introduce or supply a work-seeker to a hirer unless it has obtained confirmation that the work-seeker is willing to work in the position which the hirer seeks to fill.”.

Amendment to regulation 22

10. For regulation 22 (additional requirements where professional qualifications are required or where work-seekers are to work with vulnerable persons) substitute—

“Additional requirements where professional qualifications or authorisation are required or where work-seekers are to work with vulnerable persons

22.—(1) Where the work-seeker is to be supplied or introduced to a hirer with a view to taking up a position which involves working with, caring for or attending a vulnerable person, neither an agency nor an employment business may introduce or supply the work-seeker to a hirer unless, in addition to the requirements in regulations 18 to 21, the requirements in paragraph (2) are satisfied.

(2) The requirements referred to in paragraph (1) are that the agency or employment business has—

- (a) subject to paragraph (3), obtained copies of any relevant qualifications or authorisations of the work-seeker and offered to provide copies of those documents to the hirer;
- (b) subject to paragraph (3), obtained two references from persons who are not relatives of the work-seeker and who have agreed that the reference provided may be disclosed to the hirer, and the agency or employment business has offered to provide copies of those references to the hirer; and
- (c) taken all other reasonably practicable steps to confirm that the work-seeker is suitable for the position concerned.

(3) (3) Where the agency or employment business has taken all reasonably practicable steps to comply with the requirements in paragraph (2) and has been unable to do so fully, it may instead—

- (a) comply with those requirements to the extent that it is able to do so;
- (b) inform the hirer that it has taken all reasonably practicable steps to comply fully with those requirements and has been unable to do so; and
- (c) inform the hirer of the details of the steps that it has taken in order to try and comply fully with those requirements.

(4) Where the work-seeker is required by law, or any professional body, to have any qualifications or authorisation to work in a position for which the work-seeker is to be supplied or introduced to a hirer, an employment business may not introduce or supply the work-seeker to a hirer unless, in addition to the requirements in regulations 18 to 21, the requirements in paragraph (5) are satisfied.

(5) The requirements referred to in paragraph (4) are that the employment business has—

- (a) subject to paragraph (6), obtained copies of any relevant qualifications or authorisation of the work-seeker, and offered to provide copies of those documents to the hirer; and
- (b) taken all other reasonably practicable steps to confirm that the work-seeker is suitable for the position concerned.

(6) Where the employment business has taken all reasonably practicable steps to comply with the requirements in paragraph (5) and has been unable to do so fully, it may instead—

- (a) comply with those requirements to the extent that it is able to do so;
- (b) inform the hirer that it has taken all reasonably practicable steps to comply fully with those requirements and has been unable to do so; and
- (c) inform the hirer of the details of the steps that it has taken in order to try and comply fully with those requirements.

(7) In this regulation “relative” has the same meaning as it is given in section 63 of the Family Law Act 1996.”.

Amendment to regulation 26

11.—(1) In paragraph (5) of regulation 26 (circumstances in which fees may be charged to work-seekers)—

- (a) after “work-seeker”, where it first appears, insert “, who is not a work-seeker seeking employment as a photographic or fashion model,”;
- (b) in sub-paragraph (a) after “listed in Schedule 3” insert “, other than photographic or fashion model”;
- (c) in sub-paragraph (c) omit “, 14”;
- (d) for sub-paragraph (d) substitute—

“(d) in relation to a work-seeker who is not seeking employment as an actor, background artist, dancer, extra, musician, singer or other performer, where an agency proposes to include information about the work-seeker in a publication, for 7 days from the date of the agency and the work-seeker entering into a contract for such a service, whether written or oral and whether or not expressly mentioning fees permitted under this paragraph—

- (i) the agency shall not charge a fee permitted by this sub-paragraph to a work-seeker;
- (ii) the work-seeker shall be entitled without detriment or penalty to cancel or withdraw from any such contract with immediate effect by informing the agency of such cancellation or withdrawal; and
- (iii) the agency shall not include the information in the publication,

and before entering into any such contract the agency shall inform the work-seeker of the right to cancel or withdraw from any such contract and the time limit for exercising that right;” and

- (e) after sub-paragraph (d) insert—

- “(e) where an agency proposes to include information about a work-seeker seeking employment as an actor, background artist, dancer, extra, musician, singer or other performer in a publication, for 30 days from the date of the agency and the work-seeker entering into a contract for such a service, whether written or oral and whether or not expressly mentioning fees permitted under this paragraph—
 - (i) the agency shall not charge a fee permitted by this paragraph to a work-seeker; and
 - (ii) the work-seeker shall be entitled without detriment or penalty to cancel or withdraw from any such contract with immediate effect by informing the agency of such cancellation or withdrawal,and before entering into any such contract the agency shall inform the work-seeker of the right to cancel or withdraw from any such contract and the time limit for exercising that right;
 - (f) where an agency proposes to include information about a work-seeker referred to in sub-paragraph (e) in a publication, after the date of the agency and the work-seeker entering into the contract referred to in that sub-paragraph, the agency shall make available to the work-seeker a copy of the information and at the same time shall inform the work-seeker of the right to object, its effect and the time limit for exercising that right and for 7 days from the date the agency first makes available a copy of the information to the work-seeker—
 - (i) the agency shall not charge a fee permitted by this paragraph to a work-seeker;
 - (ii) the agency shall not include the information in the publication; and
 - (iii) the work-seeker is entitled to object to any aspect of the information relating to the work-seeker to be included in the publication by informing the agency of an objection;
 - (g) where sub-paragraph (f) applies and the work-seeker informs the agency of an objection, the agency shall not charge a fee or include the information in the publication until the work-seeker’s reasonable requirements have been addressed (even if addressing the requirements takes longer than the period referred to in that sub-paragraph); and
 - (h) where an agency includes, or proposes to include, information about a work-seeker in a publication the work-seeker is entitled to a full refund of the fees paid if the publication including that information is not produced and made available to potential hirers within 60 days from the date payment is made by the work-seeker.
- (2) After paragraph (5) insert—
- “(5A) Where an agency makes available to the work-seeker a copy of the information referred to in paragraph (5)(f)—
- (a) during the period referred to in paragraph (5)(e), where the period referred to in paragraph (5)(f) has elapsed without an objection or where the reasonable requirements of the work-seeker have been addressed, paragraph (5)(e) continues to apply; or
 - (b) after the period referred to in paragraph (5)(e), paragraph (5)(f) applies until the latter of, the date on which the period referred to in paragraph 5(f) has elapsed or, following an objection, the date on which the reasonable requirements of the work-seeker have been addressed.

(5B) Any reference in paragraph (5) to the inclusion of information about a work-seeker in a publication includes the inclusion of a photographic image or audio or video recording of the work-seeker in a publication.

(5C) Paragraph (5B) shall not be construed, when read with paragraph (5), as preventing an agency producing a photographic image or audio or video recording for the purpose of providing a copy of the image or recording to the work-seeker. ”.

Amendment to regulation 27

12. In paragraph (1) of regulation 27 (advertisements), for “whether the services it advertises are those of an agency or an employment business, as the case may be” substitute “in relation to each position it advertises whether it is for temporary or permanent work”.

Amendment to regulation 32

13. In regulation 32 (application of the regulations to work-seekers which are incorporated) –

(a) after paragraph (2) insert—

“(2A) In regulation 5(2) after “Where the work-seeker” insert “, or the person who is or would be supplied by the work-seeker to carry out the work”; and

(b) in paragraph (12), for “any person who is under the age of 18, or who, by reason of age, infirmity or any other circumstance, is in need of care of attention” substitute “any vulnerable person”.

Amendment to Schedule 3

14. In Schedule 3 (occupations in respect of which employment agencies may charge fees to work-seekers) after “dancer,” insert “background artist, extra, walk-on,”.

Date _____ *Name*
[Title]
Department for Business, Innovation and Skills

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (S.I. 2003/3319) (“the 2003 Regulations”) and come into force on 1st October 2010. These Regulations make further provision for the proper conduct of employment agencies (“agencies”) and employment businesses; they increase the protection for work-seekers, reduce certain regulatory burdens on agencies and also make minor amendments to the 2003 Regulations.

Regulation 3 amends regulation 2 of the 2003 Regulations to provide a definition of “vulnerable person”.

Regulation 4 amends regulation 5 of the 2003 Regulations to add a cooling off period during which an agency or employment business cannot charge to a work-seeker seeking employment as an actor, background artist, dancer, extra, musician, singer or other performer a fee for that part of an additional service which consists of the production of a photographic image or audio or video recording of the work-seeker. The work-seeker will also have a right to cancel or withdraw from the contract during this period.

Regulation 5 amends regulation 13 of the 2003 Regulations to add a reference to the time period for exercising the right to withdraw or cancel introduced in regulation 5.

Regulation 6 amends regulation 14 of the 2003 Regulations to provide the requirements which employment businesses must satisfy before they supply any work-finding services to a work-seeker, including obtaining the work-seeker’s agreement to basic terms governing the relationship between them.

Regulation 7 amends regulation 16 of the 2003 Regulations to provide that where an agency provides services to which regulation 26(5) of the 2003 Regulations applies, it must agree additional terms with the work-seeker.

Regulation 8 amends regulation 17 of the 2003 Regulations to remove any reference to agencies’ agreement to terms with hirers; the regulation is to apply only to employment businesses. Paragraph (2) is amended to allow for terms to be recorded in more than one document.

Regulation 9 amends regulation 19 of the 2003 Regulations to modify the suitability checks that agencies carry out on work-seekers.

Regulation 10 amends regulation 22 of the 2003 Regulations to release agencies from carrying out additional checks on the suitability of work-seekers, unless the agency is supplying a work-seeker to work with, care for or attend a vulnerable person.

Regulation 11 amends regulation 26(5) of the 2003 Regulations to prohibit the charging of upfront fees to work-seekers seeking employment as a photographic or fashion model. It also places additional requirements on agencies, which charge an upfront fee to work-seekers, and provides that information included in a publication includes photographic images and audio and video recordings.

Regulation 12 amends regulation 27(1) of the 2003 Regulations to provide that advertisements for jobs must state whether a position is permanent or temporary rather than whether the services they are offering are those of an agency or an employment business.

Regulation 13 makes minor amendments to regulation 32 of the 2003 Regulations.

Regulation 14 amends Schedule 3 to the 2003 Regulations to add references to background artists, extras and walk-ons to the list of occupations in respect of which agencies may charge fees to work-seekers.

An Impact Assessment in respect of these Regulations is available and a copy can be obtained from the Department for Business, Innovation and Skills, Employment Relations Directorate, 1 Victoria Street, London SW1H 0ET or on www.bis.gov.uk. Copies have also been placed in the libraries of both Houses of Parliament.