

Draft Regulations laid before Parliament under section 12(5) of the Employment Agencies Act 1973 and paragraph 2(2) of Schedule 2 to the European Communities Act 1972 for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2016 No. 0000

EMPLOYMENT AGENCIES, ETC.

**The Conduct of Employment Agencies and Employment
Businesses (Amendment) Regulations 2016**

Made - - - - - ***

Coming into force in accordance with regulation 1

The Secretary of State is a Minister designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to measures relating to maritime transport.

The Secretary of State, having consulted such bodies as appear to the Secretary of State representative of the interests concerned(c), makes the following Regulations, in exercise of powers conferred by sections 5(1) and 12(3) of the Employment Agencies Act 1973(d) and section 2(2) of the European Communities Act 1972.

A draft of these Regulations was laid before Parliament in accordance with section 12(5)(e) of the Employment Agencies Act 1973 and paragraph 2(2) of Schedule 2 to the European Communities Act 1972 and approved by a resolution of each House of Parliament.

Citation and commencement

1.—(1) These Regulations may be cited as the Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2016.

(2) These Regulations come into force on—

(a) 6th April 2016, or

(b) if later, at the end of the period of 21 days beginning with the day on which they are made.

(a) Article 2 of, and the Schedule to, the European Communities (Designation) Order 1994 (S.I. 1994/757).

(b) 1972 c.68. Section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c.51) and by section 3 of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c.7). The Maritime Labour Convention is regarded as one of the EU Treaties within the meaning of section 1(2) of the European Communities Act 1972 by virtue of the European Communities (Definition of Treaties) (Maritime Labour Convention) Order 2009 (S.I. 2009/1757), as amended by S.I. 2011/1043.

(c) Section 12(2) of the Employment Agencies Act 1973 requires the Secretary of State to consult with representative bodies before making Regulations under that Act.

(d) 1973 c.35. Section 5(1) was amended by the Employment Relations Act 1999 (c.26), section 31 and Schedule 7, paragraphs 1 and 2.

(e) Section 12(5) was substituted by the Employment Relations Act 1999, section 31 and Schedule 7, paragraphs 1 and 6.

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

2.—(1) The Conduct of Employment Agencies and Employment Businesses Regulations 2003(a) are amended as follows.

(2) Omit regulation 9 (restriction on agencies and employment businesses purporting to act on a different basis).

(3) Omit regulation 11 (entering into a contract on behalf of a client).

(4) In paragraph (1)(b) of regulation 16 (requirement to obtain agreement to terms with work-seekers and content of terms with work-seekers: agencies) omit “(in accordance with regulation 11)”.

(5) Omit regulation 17 (requirement for employment businesses to obtain agreement to terms with hirers).

(6) For paragraph (1) of regulation 23 (situations where more than one agency or employment business is involved) substitute—

“(1) An agency (“A”) acting for a work-seeker whom it is permitted by regulation 26(1) to charge for work-finding services may not enter into any contract or arrangement with another agency (“B”) with a view to B providing or facilitating the provision of such services in relation to the work-seeker unless—

- (a) A has ensured that the hirer has been informed that any payment due to the work-seeker must be paid either directly to the work-seeker, or to A, rather than to B; or
- (b) A and B have agreed that B may receive any payment due to the work-seeker and the following conditions are met—
 - (i) they have agreed that B shall pass the monies to A or to the work-seeker within 10 days of receipt by B of the same;
 - (ii) provided that the applicable law of the agreement between A and B does not prevent it, they have agreed that the work-seeker may enforce the term referred to in sub-paragraph (b)(i) in the event that B fails to pass the monies to A or the work-seeker within the 10 day period; and
 - (iii) the terms of the agreement reached between A and B in accordance with sub-paragraphs (b)(i) and (ii) are recorded in paper form or by electronic means.”

(7) For regulation 27A substitute—

“Advertising in other EEA states

27A.—(1) An agency or employment business must not publish a relevant recruitment advertisement in an EEA state other than the United Kingdom unless—

- (a) it publishes the advertisement in English in Great Britain at the same time as it publishes the advertisement in the other EEA state; or
- (b) it has published the advertisement in English in Great Britain for all or part of the period of 28 days ending with the day on which it publishes the advertisement in the other EEA state.

(2) Paragraph (1) does not apply if the relevant recruitment advertisement concerns a vacancy for a worker to act solely for, and under the control of, the agency or employment business itself.

(3) It is a defence in any proceedings under—

- (a) section 5(2) of the Act(b), or
- (b) regulation 30,

(a) S.I. 2003/3319; relevant amending instruments are: S.I. 2007/3575, S.I. 2010/1782 and S.I. 2014/3351.

(b) Section 5(2) was amended by the Employment Act 2008 (c.24), section 15.

in respect of a contravention of paragraph (1) that the agency or employment business believes, on reasonable grounds, that publishing the relevant recruitment advertisement in English in Great Britain would be disproportionate having regard to the likelihood that doing so would bring the advertisement to the attention of a person with the skills sought by the agency or employment business.

(4) For the purposes of this regulation—

- (a) “publish” means make, or cause to be made, available to the public or a section of the public,
- (b) an advertisement on a website is taken to be published in all places from which the website can be accessed,
- (c) “a relevant recruitment advertisement” means either—
 - (i) an advertisement in respect of a particular vacant position, the duties of which are ordinarily to be performed in Great Britain, or
 - (ii) an advertisement by which an agency or employment business seeks to identify worker-seekers who are looking for a position, the duties of which are ordinarily to be performed in Great Britain.”

(8) In paragraph (1) of regulation 29 (records)—

- (a) insert “and” at the end of sub-paragraph (a);
- (b) omit “and” at the end of sub-paragraph (b);
- (c) omit sub-paragraph (c).

(9) In Schedule 4 (particulars to be included in an agency’s or employment business’s records relating to work-seekers) omit paragraphs 1, 5, and 9.

(10) In Schedule 5 (particulars to be included in an agency’s or employment business’s records relating to hirers) omit paragraphs 1, 2, 6, 7, 8 and 10.

(11) Omit Schedule 6 (particulars to be included in an agency’s or employment business’s records relating to other agencies or employment businesses).

(12) After regulation 33 (electronic and other communications) insert—

“Review

34.—(1) The Secretary of State must from time to time carry out a review of the provisions listed in paragraph (2).

(2) The listed provisions are—

- (a) Part 2 (general obligations);
- (b) Part 3 (requirements to be satisfied before services are provided);
- (c) Part 5 (special situations); and
- (d) Part 7 (miscellaneous).

(3) The Secretary of State must—

- (a) set out the conclusions of the review carried out in accordance with paragraph (1) in a report; and
- (b) publish the report.

(4) The report must in particular—

- (a) set out the objectives intended to be achieved by the provisions listed in paragraph (2);
- (b) assess the extent to which those objectives are achieved; and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(5) The first report under this regulation must be published before the end of the period of five years beginning with the day on which the Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2016 come into force.

(6) Reports under this regulation are afterwards to be published at intervals not exceeding five years.”

Amendments to the Merchant Shipping (Maritime Labour Convention) (Recruitment and Placement) Regulations 2014

3.—(1) The Merchant Shipping (Maritime Labour Convention) (Recruitment and Placement) Regulations 2014^(a) are amended as follows.

(2) For regulation 7 (duty on employment agencies and businesses to maintain records) substitute—

“Duty on employment agencies and businesses to maintain records

7.—(1) Subject to paragraph (5), every employment agency and employment business must keep records which are sufficient to show whether the provisions of these Regulations are being complied with, including the particulars specified in paragraphs (2) and (3).

(2) The particulars to be included in relation to every application received by the employment agency or employment business from a work-seeker are—

- (a) the date on which the application was received;
- (b) the work-seeker’s name, address and, if under 22 on the date the application was received, the date of birth;
- (c) any terms which apply or will apply between the employment agency or employment business and the work-seeker, and any document recording any variation of the terms;
- (d) details of the work-seeker’s training, experience, qualifications, and any authorisation to undertake particular work (and copies of any documentary evidence of the same obtained by the employment agency or employment business);
- (e) details of any requirements specified by the work-seeker in relation to taking up employment;
- (f) the names of hirers to whom the work-seeker is introduced or supplied;
- (g) details of any resulting engagement and date from which it takes effect;
- (h) a copy of any contract between the work-seeker and any hirer entered into by the employment agency on the work-seeker’s behalf;
- (i) the date on which the application was withdrawn or the contract terminated (where applicable);
- (j) in the case of an employment agency that is permitted by the Conduct Regulations to charge fees to work-seekers—
 - (i) the dates of the requests by the employment agency for fees from the work-seeker and of receipt of such fees, with copy statements or invoices, numbers and amounts; or
 - (ii) statements of dates and amounts of sums deducted from money received by the employment agency on the work-seeker’s behalf in accordance with regulation 25 of the Conduct Regulations, to the extent that these are not required to be comprised in records maintained in respect of a client account in accordance with paragraph 12 of Schedule 2 to the Conduct Regulations;

(a) S.I. 2014/1615.

- (k) details of enquiries made under regulation 4 about the work-seeker and the position concerned with copies of all relevant documents and dates they were received or sent as the case may be.
- (3) The particulars to be included in relation to every application received by the employment agency or employment business from a hirer are—
- (a) the date on which the application was received;
 - (b) the hirer’s name and address, and location of the work to be done for the hirer;
 - (c) details of the position the hirer seeks to fill;
 - (d) the duration or likely duration of work;
 - (e) any experience, training, ability, qualifications, and authorisation required by the hirer, by law, or by any professional body and any other conditions attaching to the position the hirer seeks to fill;
 - (f) the terms offered in respect of the position the hirer seeks to fill;
 - (g) a copy of the terms between the employment agency or employment business and the hirer, and any document recording any variation of the terms;
 - (h) the names of work-seekers introduced or supplied;
 - (i) details of each resulting engagement and date from which it takes effect;
 - (j) the dates of requests by the employment agency or employment business for fees or other payment from the hirer and of receipt of such fees or other payments, and copies of statements or invoices.
- (4) The records mentioned in paragraph (1) must be kept—
- (a) for a period of at least one year starting with the date of their creation; and
 - (b) for a period of at least one year starting with the date on which the employment agency or employment business last provided services in the course of its business as an employment agency or an employment business to the applicant to whom they relate.
- (5) The obligation to keep records of the particulars referred to in paragraph (1) does not apply to applications in respect of which the employment agency or employment business takes no action.
- (6) The records mentioned in paragraph (1) must be kept by an employment agency or employment business either—
- (a) at any premises it uses for or in connection with the carrying on of an employment agency or employment business; or
 - (b) at another location where the records are readily accessible by it.
- (7) The records an employment agency or employment business is required to keep pursuant to this regulation may be kept in electronic form, provided that the information so recorded is capable of being reproduced in legible form.”
- (3) In paragraph (1) of regulation 8 (offences) for “7(1), (2) or (5)” substitute “7(1), (4) or (6)”.

Date

Name
Minister of State for Skills
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 6th April 2016. These Regulations reduce certain regulatory burdens on employment agencies and employment businesses and make provision in relation to recruitment advertising outside Great Britain.

Regulation 2(2) revokes regulation 9 of the 2003 Regulations. There will no longer be a restriction on employment agencies and employment businesses purporting to act on a different basis.

Regulation 2(3) revokes regulation 11 of the 2003 Regulations. There will no longer be a restriction on employment agencies and employment businesses entering into a contract on behalf of a work-seeker with a hirer or entering into a contract on behalf of a hirer with a work-seeker.

Regulation 2(5) revokes regulation 17 of the 2003 Regulations. There will no longer be a requirement for employment agencies or employment businesses to obtain agreement to terms with hirers.

Regulation 2(6) amends regulation 23 of the 2003 Regulations. This removes the requirements in situations where there is more than one employment agency or employment businesses involved in providing work-finding services unless the employment agency is acting for a work-seeker whom it is permitted by regulation 26(1) of the 2003 Regulations.

Regulation 2(7) replaces regulation 27A of the 2003 Regulations. It extends the coverage of the prohibition in the previous regulation 27A so that, subject to a defence, employment agencies and employment businesses that wish to advertise elsewhere in the EEA for work-seekers to take up jobs in Great Britain must also advertise in English in Great Britain. The difference is that generic advertising is targeted as well as advertising for specific vacancies.

Regulation 2(9) amends Schedule 4 of the 2003 Regulations. This removes the requirement on employment agencies and employment businesses to include certain particulars in their records relating to work-seekers.

Regulation 2(10) amends Schedule 5 of the 2003 Regulations. This removes the requirement on employment agencies and employment businesses to include certain particulars in their records relating to hirers.

Regulation 2(11) revokes Schedule 6 of the 2003 Regulations. This removes the requirement on employment agencies and employment businesses to include particulars in their records relating to other employment agencies or employment businesses.

Regulation 2(12) requires the Secretary of State to review the operation and effect of Parts 2, 3, 5 and 7 of the 2003 Regulations and publish a report within five years after these Regulations come into force and within every five years after that. Following a review it will fall to the Secretary of State to consider whether the relevant parts of the 2003 Regulations should remain as they are, or be revoked or be amended. A further instrument would be needed to revoke the relevant parts of the 2003 Regulations or to amend them.

Regulation 3 amends the Merchant Shipping (Maritime Labour Convention) (Recruitment and Placement) Regulations 2014 (S.I. 2014/1615) (“the Merchant Shipping Regulations”). These are consequential amendments further to the amendments made to the 2003 Regulations. The Merchant Shipping Regulations implement part of Regulation 1.4 of the Maritime Labour Convention 2006 (Cm 7049).

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Department for Business, Innovation and Skills and is annexed to the Explanatory Memorandum which is available alongside the instrument on www.legislation.gov.uk.

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