
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (the “2003 Regulations”). They make provision to ensure that persons using the services of employment businesses to find work receive a document which sets out clearly and succinctly certain key information concerning their relationship.

They do not make any new provision relating to employment agencies.

Employment businesses and employment agencies are defined in section 13 of the Employment Agencies Act 1973 and regulation 2 of the 2003 Regulations.

Regulation 3 inserts a new regulation 13A in the 2003 Regulations. This requires the employment business to give a key information document to a person seeking work through the business. The document must be given before the business reaches an agreement on terms with that person.

Paragraph (3) of regulation 13A sets out required contents of the statement, including information about pay, benefits, costs, deductions and fees and a representative example statement which illustrates the remuneration which the person seeking work can expect to receive.

One of the items also required by paragraph (3) is the contact details of the enforcement officers appointed or arranged by the Secretary of State under the Employment Agencies Act 1973. Employment businesses can obtain these contact details at <https://www.gov.uk/government/organisations/employment-agency-standards-inspectorate>, by emailing cas@beis.gov.uk or by writing to the Labour Market Directorate, Department for Business, Energy and Industrial Strategy, 1 Victoria Street, London SW1H 0ET.

In some cases the person seeking work through the employment business may be a different person from the individual who will ultimately provide the work to a hirer. For example, the person seeking work may be a company or other legal entity which then directly or indirectly provides the individual to the hirer. Where this is arranged by the employment business, or where (as is often a feature of these or similar arrangements) the individual worker is paid by a person other than the employment business, paragraph (6) of the new regulation 13A requires the key information document to include different information in place of the information required by paragraph (3)(c) and (d). This includes information about the employer of the individual worker and the person who will normally pay that worker, as well as information about pay, benefits, costs, deductions and fees. The information must explain any differences between the remuneration payable to the person seeking work through the employment business (before costs, deductions and fees) and the net remuneration payable to the individual. A representative example statement which illustrates the remuneration which the individual who will provide the work can expect to receive must be included.

Where paragraph (6) applies, the employment business must give the key information document to the individual who will provide the work to the hirer as well as to the person seeking work through the employment business (see paragraph (1) of the new regulation 13A). However, paragraph (6) does not apply where the person seeking work through the employment business is a company (sometimes referred to as a personal service company) controlled by the individual who will provide the work to the hirer, or by their spouse or civil partner (see paragraphs (4) and (5) of regulation 13A).

It is possible that some of the information required by paragraph (6) may not be immediately known to the employment business required to provide it, for example because it relates to a company which is seeking work for individuals which it will then provide to hirers. Where that is the case, the employment business may need (for example by contract) to obtain the information from another

person such as the person seeking work through the employment business or the person who will employ or pay the individual worker. Paragraphs (7) and (8) provide for the employment business to be able to rely on such information.

Paragraphs (10) and (11) of the new regulation 13A provide for the way in which information is to be presented.

Paragraph (12) of the new regulation 13A allows, but does not require, the employment business to provide different key information documents while terms remain to be agreed with the person seeking work, provided that these are then updated if necessary. In any event however, and whether or not different key information documents have been provided under paragraph (12), a key information document must be provided once the terms and other details are finalised (paragraphs (13) and (14)).

Paragraphs (15) and (16) require the key information document to be updated where, after terms have been agreed, there are changes in the details included in the document. However, this obligation only applies where the employment business first provided services to the relevant person on or after 6th April 2020 and while it continues to provide those services (paragraph (17)).

Paragraph (18) provides that the new regulation 13A applies to persons seeking work which are companies, even if the person seeking work and the individual worker enter an agreement in accordance with regulation 32(9) of the 2003 Regulations, which disapplies other provisions of the 2003 Regulations. It is not possible to disapply (i.e. “opt out of”) the requirements of the new regulation 13A.

Regulation 6 inserts in Schedule 4 of the 2003 Regulations an additional requirement for the employment business to keep records relating to any finalised key information document (but not any earlier versions provided before agreement is reached) and to any revised such document. Regulation 4 clarifies that this additional requirement applies where the person seeking work is a company and an agreement has been entered in accordance with regulation 32(9) of the 2003 Regulations.

Regulation 7 requires the Secretary of State to review the changes to the 2003 Regulations made by these Regulations at intervals not exceeding five years, as contemplated by section 28 of the Small Business, Enterprise and Employment Act 2015.

An impact assessment has not been produced for this instrument as no significant impact on the private, voluntary or public sector is foreseen.