

2019 No. 725

EMPLOYMENT AGENCIES, ETC.

**The Conduct of Employment Agencies and Employment
Businesses (Amendment) Regulations 2019**

Made - - - - 28th March 2019

Coming into force - - 6th April 2020

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

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

Citation and commencement

1. These Regulations may be cited as the Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2019 and come into force on 6th April 2020.

Amendment of the Conduct of Employment Agencies and Employment Businesses Regulations 2003

2. The Conduct of Employment Agencies and Employment Businesses Regulations 2003^(d) are amended as follows.

3. After regulation 13, insert—

“Key information document: Employment businesses

13A.—(1) Before obtaining the agreement of the work-seeker to the terms which will apply as between the employment business and the work-seeker in accordance with regulation 14, an employment business must give the work-seeker and, where paragraph (6) applies, any person to be supplied by the work-seeker to carry out the work a key information document in accordance with this regulation.

(2) The key information document must be separate from any other documents provided to the work-seeker or any person to be supplied to carry out the work.

(3) The key information document must include—

(a) Section 12(2) of the Employment Agencies Act 1973 (c.35) requires the Secretary of State to consult with representative bodies before making regulations under that Act.
(b) 1973 c.35. Section 5(1) was amended by the Employment Relations Act 1999 (c.26), Schedule 7, paragraphs 1, 2(1) and (2).
(c) Section 12(5) as originally enacted was substituted by the Employment Relations Act 1999 (c.26), Schedule 7, paragraphs 1 and 6.
(d) S.I. 2003/3319.

- (a) the title “Key Information Document” at the top of the first page;
- (b) a statement immediately beneath the title that—
 - (i) the key information document specifies key information which relates to the relationship between the employment business and the work-seeker and, where paragraph (6) applies, any person to be supplied by the work-seeker to carry out the work;
 - (ii) where necessary, identifies documents where further related information may be found; and
 - (iii) includes contact details of the officers appointed or arranged to act under section 8A of the Employment Agencies Act 1973 and informs the work-seeker and, where paragraph (6) applies, any person to be supplied by the work-seeker to carry out the work that they may contact those officers if they are concerned about a breach by the employment business of obligations under that Act or these Regulations^(a);
- (c) except where paragraph (6) applies, details in respect of—
 - (i) whether the work-seeker is or will be employed by the employment business under a contract of service or apprenticeship, or a contract for services;
 - (ii) the identity of the employment business;
 - (iii) if not the employment business, the identity of the person who will normally pay the work-seeker in respect of the work done;
 - (iv) either—
 - (aa) the rate of remuneration payable to the work-seeker; or
 - (bb) the minimum rate of remuneration the employment business reasonably expects to achieve for the work-seeker;
 - (v) the intervals at which the remuneration will be paid;
 - (vi) the nature of any costs and deductions required by law and affecting the work-seeker’s remuneration;
 - (vii) the nature and the amount (or, where the amount cannot be stated, the method of calculation) of any other costs and deductions affecting the work-seeker’s remuneration;
 - (viii) the nature and the amount (or, where the amount cannot be stated, the method of calculation) of any fees for services or goods which may be provided by the employment business or any other person and for which the employment business or other person will or may charge a fee to the work-seeker;
 - (ix) any non-monetary benefits to which the work-seeker is entitled; and
 - (x) details of any entitlement to annual holidays and to payment in respect of such holidays; and
- (d) except where paragraph (6) applies, a representative example statement which sets out as amounts, reasonably estimated where necessary and item by item, for a single prospective period based on the intervals at which remuneration will be paid—
 - (i) the gross remuneration payable to the work-seeker, as referred to at paragraph (c)(iv);
 - (ii) any costs and deductions affecting the remuneration which are required by law, as referred to at paragraph (c)(vi);

(a) Employment businesses can obtain contact details of the officers appointed or arranged to act at <https://www.gov.uk/government/organisations/employment-agency-standards-inspectorate>, by emailing eas@beis.gov.uk or by writing to the Labour Market Directorate, Department for Business, Energy and Industrial Strategy, 1 Victoria Street, London SW1H 0ET.

- (iii) any other costs and deductions affecting the remuneration, as referred to at paragraph (c)(vii);
- (iv) any fees for services or goods to be provided by the employment business or any other person and for which the employment business or any other person will or may charge a fee to the work-seeker, as referred to at paragraph (c)(viii); and
- (v) the net remuneration payable to the work-seeker after taking account of all costs, deductions and fees.

(4) Paragraph (6) applies where—

- (a) the work-seeker is not the person to be supplied to carry out the work;
- (b) the work-seeker is not a company of which the person to be supplied to carry out the work or the spouse or civil partner of that person, either separately or together, has or have control; and
- (c) either—
 - (i) the employment business arranges for the person to be supplied to carry out the work to be supplied by a work-seeker; or
 - (ii) the employment business is not the person who will normally pay the person to be supplied to carry out the work.

(5) For the purposes of sub-paragraph (4)(b), a person is to be taken to have control of a company if that person beneficially owns more than half of the issued share capital of the company or has the legal power to direct or cause the direction of the general management of the company.

(6) Where this paragraph applies, the key information document must include, instead of the information required by sub-paragraphs (3)(c) and (d)—

- (a) details in respect of—
 - (i) the identity of the work-seeker;
 - (ii) whether the person to be supplied to carry out the work is or will be employed by their employer under a contract of service or apprenticeship, or a contract for services;
 - (iii) the identity of the employer of the person to be supplied to carry out the work;
 - (iv) if not the employer, the identity of the person who will normally pay the person to be supplied to carry out the work;
 - (v) where any of the employment business, the work-seeker, the employer of the person to be supplied to carry out the work and the person who will normally pay the person to be supplied to carry out the work is connected with any other such person, the nature of the connection;
 - (vi) either—
 - (aa) the rate of remuneration payable to the work-seeker in respect of the person to be supplied to carry out the work; or
 - (bb) the minimum rate of remuneration the employment business reasonably expects to achieve for the work-seeker in respect of the person to be supplied to carry out the work;
 - (vii) either—
 - (aa) the rate of remuneration payable to the person to be supplied to carry out the work; or
 - (bb) the minimum rate of remuneration the employment business reasonably expects to be achieved for the person to be supplied to carry out the work;
 - (viii) the intervals at which the remuneration will be paid to the work-seeker and the person to be supplied to carry out the work respectively;

- (ix) the nature of any costs and deductions affecting the remuneration of the person to be supplied to carry out the work which are required by law, stating whether those costs and deductions will be applied to the remuneration stated in accordance with paragraph (vi) or to the remuneration stated in accordance with paragraph (vii);
 - (x) the nature and the amount (or, where the amount cannot be stated, the method of calculation) of any other costs and deductions affecting the remuneration of the person to be supplied to carry out the work, stating whether those costs and deductions will be applied to the remuneration stated in accordance with paragraph (vi) or to the remuneration stated in accordance with paragraph (vii);
 - (xi) the nature and the amount (or, where the amount cannot be stated, the method of calculation) of any fees for services or goods which may be provided by the employment business, the work-seeker or any other person and for which the employment business, the work-seeker or any other person will or may charge a fee to the person to be supplied to carry out the work;
 - (xii) an explanation of the difference between the rate of remuneration or minimum rate of remuneration payable to or expected to be achieved for the work-seeker as stated in accordance with paragraph (vi) and the net rate of remuneration payable to or expected to be achieved for the person to be supplied to carry out the work, if and to the extent that the difference is not fully explained by the information stated in accordance with paragraphs (ix), (x) and (xi);
 - (xiii) any non-monetary benefits to which the person to be supplied to carry out the work is entitled;
 - (xiv) details of any annual holidays to which the person to be supplied to carry out the work is entitled and of any entitlement to payment in respect of the same; and
 - (xv) where the work-seeker is a company and the work-seeker and the person to be supplied to carry out the work have made an agreement in accordance with paragraph (9) of regulation 32, details of that agreement; and
- (b) a representative example statement which sets out as amounts, reasonably estimated where necessary and item by item, for a single prospective period based on the intervals at which remuneration will be paid to the person to be supplied to carry out the work—
- (i) the gross remuneration payable to the work-seeker, as referred to at paragraph (a)(vi);
 - (ii) any costs and deductions affecting the remuneration of the person to be supplied to carry out the work which are required by law, as referred to at paragraph (a)(ix);
 - (iii) any other costs and deductions affecting the remuneration of the person to be supplied to carry out the work, as referred to at paragraph (a)(x);
 - (iv) any fees for services or goods to be provided by the employment business, the work-seeker or any other person and for which the employment business, the work-seeker or any other person will or may charge a fee to the person to be supplied to carry out the work, as referred to at paragraph (a)(xi);
 - (v) any other item referred to at paragraph (a)(xii); and
 - (vi) the net remuneration payable to the person to be supplied to carry out the work after taking account of all costs, deductions, fees and other items.

(7) Where information required by paragraph (6) is not directly within the knowledge of the employment business, the employment business may rely on information provided in writing to the employment business by the work-seeker, the employer of the person to be supplied to carry out the work or the person who will normally pay the person to be

supplied to carry out the work, provided that any such information relates directly to the person providing it.

(8) The employment business must, by no later than the end of the fifth business day following a request by the work-seeker or the person who is or would be supplied to carry out the work, provide to the person requesting the information a copy of any information on which the employment business relies as permitted by paragraph (7).

(9) The key information document—

- (a) may contain details of any other terms agreed under regulation 14 in respect of content required to be agreed under regulation 15; but
- (b) may not contain any other items of additional information.

(10) The key information document must be—

- (a) written in a clear and succinct manner;
- (b) a maximum of two sides of A4-sized paper (being sides of paper with the dimensions 210 by 297 millimetres) when printed; and
- (c) presented in a way that is easy to read, using characters of readable size.

(11) Where it is not possible to include all the information required under paragraph (3) and, where applicable, paragraph (6), together with any additional information included as permitted by sub-paragraph (9)(a), in a manner which complies with paragraph (10), the employment business may, to the extent necessary, provide a summary of that information in the key information document and a reference to where more details of that information may be found in another document, or documents, provided to the work-seeker and, where paragraph (6) applies, to the person to be supplied to carry out the work.

(12) The employment business—

- (a) may (but is not required to) give the work-seeker and, where paragraph (6) applies, the person to be supplied to carry out the work more than one key information document where there are options or other variations which may apply to the details required to be included under paragraphs (3) and, where applicable, paragraph (6), or to any additional information included as permitted by sub-paragraph (9)(a), and therefore the document is not finalised; and
- (b) must give the work-seeker and, where paragraph (6) applies, the person to be supplied to carry out the work a revised key information document where the details required to be included under paragraph (3) and, where applicable, paragraph (6), or included as additional information as permitted by sub-paragraph (9)(a), change after any key information document has been given in accordance with sub-paragraph (a) but before the agreement of the work-seeker to the terms which will apply as between the employment business and the work-seeker is obtained in accordance with regulation 14.

(13) Whether or not the employment business has previously given any key information document in accordance with paragraph (12), the employment business must at the appropriate time give a finalised key information document to the work-seeker and, where paragraph (6) applies, the person to be supplied to carry out the work.

(14) In paragraph (13), “the appropriate time” means any time after the content of the key information document is, subject only to the agreement of the work-seeker to the terms which will apply as between the employment business and the work-seeker being obtained in accordance with regulation 14, finalised (including, where relevant, by resolution of any options or variations), but before that agreement is obtained.

(15) If any of the details required to be included under paragraphs (3) or (6), or included as additional information as permitted by sub-paragraph (9)(a), change after the agreement of the work-seeker to the terms which will apply as between the employment business and the work-seeker is obtained in accordance with regulation 14, the employment business must, by no later than the end of the fifth business day following the day on which the change occurred, give to the work-seeker and, where paragraph (6) applies, to the person

who is or would be supplied to carry out the work a revised key information document stating the date on or after which the revisions take effect.

(16) Paragraphs (2) to (11) apply to any revised key information document given in accordance with paragraph (15) in the same way as to a key information document given before any agreement of the work-seeker to the terms which will apply as between the employment business and the work-seeker in accordance with regulation 14, but as if references to the person to be supplied to do the work were references to the person who is or would be supplied to do the work.

(17) But paragraph (15) only applies—

- (a) where the employment business first provided any work-finding services to a work-seeker on or after 6th April 2020 and, accordingly, was required to give a key information document in accordance with this regulation; and
- (b) while the employment business continues to provide services in the course of its business as an employment business to the work-seeker or the person supplied to do the work.

(18) For the purposes of this regulation, a work-seeker includes a work-seeker which is a company, whether or not an agreement has been made in accordance with paragraph (9) of regulation 32.”.

4. In regulation 29, at the end, insert—

“(7) “For the purposes of paragraph (1)(a) of this regulation, so far as that paragraph requires an employment business to keep records of the particulars specified in paragraph 2A of Schedule 4, the reference in paragraph (1) of this regulation to a work-seeker includes a work-seeker which is a company, whether or not an agreement has been made in accordance with paragraph (9) of regulation 32.”.

5. In paragraph (9) of regulation 32, after “Subject to” insert “paragraph (18) of regulation 13A, paragraph (7) of regulation 29 and”.

6. In Schedule 4, after paragraph 2, insert—

“**2A.** In the case of an employment business, any key information document required to be given by paragraph (13) of regulation 13A and any revised key information document required to be given by paragraph (15) of regulation 13A.”

Review

7.—(1) The Secretary of State must from time to time—

- (a) carry out a review of the regulatory provisions contained in the Conduct of Employment Agencies and Employment Businesses Regulations 2003 to the extent only of the effect of the amendments made by these Regulations; and
- (b) publish a report setting out the conclusions of the review.

(2) The first report must be published before 6th April 2025.

(3) Subsequent reports must be published at intervals not exceeding 5 years.

(4) A report published under this regulation must, in particular—

- (a) set out the objectives intended to be achieved by the regulatory provisions referred to in paragraph (1)(a);
- (b) assess the extent to which those objectives are achieved;
- (c) assess whether those objectives remain appropriate; and
- (d) if those objectives remain appropriate, assess the extent to which they could be achieved in another way which involves less onerous regulatory provision.

(5) In this regulation, “regulatory provision” has the same meaning as in sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015 (see section 32 of that Act)(a).

28th March 2019

Henley
Parliamentary Under-Secretary of State
Department for Business, Energy and Industrial Strategy

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 eas@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

(a) 2015 c.26.

(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.

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