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DRAFT STATUTORY INSTRUMENTS

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**2003 No.**

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

**PART VII**

**MISCELLANEOUS**

**Advertisements**

**27.**—(1) Every advertisement issued or caused to be issued by an agency or employment business shall mention in either audibly spoken words or easily legible characters the full name of the agency or employment business, and whether the services it advertises are those of an agency or an employment business, as the case may be.

(2) Neither an agency nor an employment business may issue or cause to be issued an advertisement about positions which hirers seek to fill unless the agency or employment business has—

- (a) information about specific positions of all types to which the advertisement relates; and
- (b) in relation to each such position, the authority of the hirer concerned to find work-seekers for that position, or the authority of an agency or employment business, which has such authority to issue the advertisement or cause it to be issued.

(3) An agency or employment business shall, in every advertisement for work-seekers issued or caused to be issued by it in which rates of pay are given, state the nature of the work, the location at which the work-seeker would be required to work, and the minimum experience, training or qualifications which the work-seeker would be required to have in order to receive those rates of pay.

**Confidentiality**

**28.**—(1) Neither an agency nor an employment business may disclose information relating to a work-seeker, without the prior consent of that work-seeker, except—

- (a) for the purpose of providing work-finding services to that work-seeker;
- (b) for the purposes of any legal proceedings (including arbitration); or
- (c) in the case of a work-seeker who is a member of a professional body, to the professional body of which he is a member.

(2) Without prejudice to the generality of paragraph (1), an agency shall not disclose information relating to a work-seeker to any current employer of that work-seeker without that work-seeker's prior consent, which has not by the time of such disclosure been withdrawn, and shall not make the provision of any services to that work-seeker conditional upon such consent being given or not withdrawn.

## Records

**29.**—(1) Subject to paragraph (6), every agency and every employment business shall keep records which are sufficient to show whether the provisions of the Act and these Regulations are being complied with including (subject to paragraph (3))—

- (a) the particulars specified in Schedule 4, in relation to every application received by the agency or employment business from a work-seeker;
- (b) the particulars specified in Schedule 5, in relation to every application received by the agency or employment business from a hirer; and
- (c) the particulars specified in Schedule 6 relating to dealings with other agencies and employment businesses.

(2) The records mentioned in paragraph (1) shall be kept for at least one year from the date of their creation, and in the case of the particulars referred to in sub-paragraphs (a) and (b) of paragraph (1), at least one year after the date on which the agency or employment business last provides services in the course of its business as an agency or an employment business to the applicant to whom they relate.

(3) Neither an agency nor an employment business is required to keep the particulars referred to in paragraphs (1)(a) or (1)(b) in respect of applications on which the agency or employment business takes no action.

(4) The records mentioned in paragraph (1) may be kept by an agency or employment business, either at any premises it uses for or in connection with the carrying on of an agency or employment business, or elsewhere. If they are kept elsewhere, the agency or employment business shall ensure that they are readily accessible by it and that it is reasonably practicable for any person employed by the agency or employment business at any premises it uses for or in connection with the carrying on of an agency or employment business to arrange for them to be delivered no later than the end of the second business day following the day on which a request under section 9 of the Act<sup>(1)</sup> for them is made, to the premises at which that person is employed.

(5) The records an 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.

(6) This regulation does not apply to any records which an agency is required to preserve in accordance with paragraph 12 of Schedule 2.

## Civil liability

**30.**—(1) Without prejudice to—

- (a) any right of action; and
- (b) any defence,

which exists or may be available apart from the provisions of the Act and these Regulations, contravention of, or failure to comply with, any of the provisions of the Act or of these Regulations by an agency or employment business shall, so far as it causes damage, be actionable.

(2) In this regulation, “damage” includes the death of, or injury to, any person (including any disease and any impairment of that person’s physical or mental condition).

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(1) Section 9 was amended by the Employment Protection Act 1975 (c. 71), sections 114, 125(3), Schedule 13, paragraph 6(1), (2), (3), Schedule 18, the Criminal Justice Act 1982 (c. 48), sections 37, 38, 46, the Deregulation and Contracting Out Act 1994 (c. 40), sections 35, 81, Schedule 10, paragraph 1(4), Schedule 17, and prospectively by the Employment Relations Act 1999 (c. 26), section 44, Schedule 7, paragraphs 1, 4 and Schedule 9, Table 8.

### **Effect of prohibited or unenforceable terms and recoverability of monies**

**31.**—(1) Where any term of a contract is prohibited or made unenforceable by these Regulations, the contract shall continue to bind the parties to it if it is capable of continuing in existence without that term.

(2) Where a hirer pays any money pursuant to a contractual term which is unenforceable by virtue of regulation 10, the hirer is entitled to recover that money.

### **Application of the Regulations to work-seekers which are incorporated**

**32.**—(1) Subject to paragraph (9), in these Regulations—

- (a) any reference to a work-seeker, howsoever described, includes a work-seeker which is a company; and
- (b) the regulations mentioned below shall be modified as set out below in a case where the work-seeker is a company.

(2) For regulation 5, substitute the following:

“Neither an agency nor an employment business may make the provision to a work-seeker of work-finding services conditional upon the work-seeker, or the person who is or would be supplied by the work-seeker to carry out the work—

- (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.”.

(3) For regulation 6(1), substitute the following:

“An employment business may not (whether by the inclusion of a term in a contract with a relevant work-seeker or otherwise) subject or threaten to subject to any detriment—

- (a) the relevant work-seeker, on the ground that the work-seeker has taken up or proposes to take up employment with any other person; or
- (b) the person who is or will be supplied by the relevant work-seeker to carry out the work, on the ground that he has taken up or proposes to take up employment with any person other than the employment business or the relevant work-seeker.”.

(4) In regulation 15, for paragraph (f) there shall be substituted the following—

“(f) details of any period of absence to which the work-seeker is entitled and of any entitlement to payment in respect of the same”.

(5) In regulation 18(d), for the words “for a work-seeker” on each occasion on which they occur substitute the words “for a person supplied by the work-seeker to carry out the work”.

(6) In regulation 19—

- (a) in paragraph (a), after the words “the work-seeker” add the words “and of the person the work-seeker would supply to carry out the work”; and
- (b) in paragraph (b), for the words “that the work-seeker” substitute the words “that the person who would be supplied by the work-seeker to carry out the work”.

(7) In regulations 20, 22, 24(9) and (10), 28 and Schedule 4 the references to “the work-seeker” shall include the person who would be supplied by the work-seeker to carry out the work.

(8) In regulations 24(2), (3), (4), (5), (7) and (8), the references to “the work-seeker” shall be read as references to the person who would be supplied by the work-seeker to carry out the work.

(9) Subject to paragraph (12), paragraphs (1)—(8) shall not apply where a work-seeker which is a company, and the person who is or would be supplied by that work-seeker to carry out the work, agree that they should not apply, and give notice of that agreement to an employment business or agency, provided that such notice is given before the introduction or supply of the work-seeker or the person who would be supplied by the work-seeker to do the work, to the hirer.

(10) The person who is or would be supplied to carry out the work by a work-seeker which is a company, may withdraw a notice which was given in accordance with paragraph (9) by giving notice to the employment business or agency in question of the withdrawal of the earlier notice of agreement, and, subject to paragraph (11), paragraphs (1)-(8) shall thereupon apply.

(11) Where a notice as referred to in paragraphs (9) or (10) is given to an employment business or agency whilst the person who is or would be supplied to carry out the work by a work-seeker which is a company is in fact carrying out the work in a position with a hirer, then the notice shall not take effect until that person stops working in that position.

(12) Paragraph (9) shall not apply where a person who is or would be supplied to carry out the work by a work-seeker which is a company, is or would be involved in working or attending 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 or attention.

(13) Neither an agency nor an employment business may make the provision of work-finding services to a work-seeker which is a company conditional upon the work-seeker, and the person who is or would be supplied by the work-seeker to carry out the work, entering into and giving notice of an agreement as referred to in paragraph (9), to the agency or employment business.

### **Electronic and other communications**

**33.**—(1) Except where otherwise provided, any requirement in these Regulations—

- (a) to notify, or give notice to, a person of any matter;
- (b) to give or send a document to a person;
- (c) to inform a person or provide a person with information;
- (d) to make enquiries and to receive answers,

may only be satisfied by one of the means in paragraph (3).

(2) Any reference in these Regulations to a person giving consent to something or to obtaining another person's consent to something shall be construed as a reference to giving or receiving that consent by one of the means in paragraph (3).

(3) The means referred to in paragraphs (1) and (2) are—

- (a) giving or receiving in person the notice, document, information, enquiry, answer or consent in paper form; or
- (b) sending, transmitting or receiving the notice, document, information, enquiry, answer or consent by post, facsimile or by other electronic means to an address provided for that purpose by the intended recipient,

provided that any information so given, sent or transmitted is in a form which is clearly legible by the intended recipient.