STATUTORY INSTRUMENTS

2016 No. 510

EMPLOYMENT AGENCIES, ETC.

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

Made - - - - 17th April 2016

Coming into force in accordance with regulation 1

The Secretary of State is a Minister designated(**1**) for the purposes of section 2(2) of the European Communities Act 1972(**2**) 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(**3**), makes the following Regulations, in exercise of powers conferred by sections 5(1) and 12(3) of the Employment Agencies Act 1973(**4**) 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)(**5**) 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.

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

(**2**) 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.

(**3**) 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.

(**4**) 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.

(**5**) 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(**6**) 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—

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

(a) section 5(2) of the Act(**7**), or

(b) regulation 30,

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.

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

(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(**8**) 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—

(**8**) S.I. 2014/1615.