Draft Legislation: *This is a draft item of legislation and has not yet been made as a UK Statutory Instrument. This draft has been replaced by a new draft, The Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2010 ISBN 978-0-11-149732-6*

Draft Regulations laid before Parliament under section 12(5) of the Employment Agencies Act 1973, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2010 No. 0000

EMPLOYMENT AGENCIES, ETC.

The Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2010

Made - - - -	*2010*
Coming into force - -	*1st October 2010*

The Secretary of State, having consulted such bodies as appear to the Secretary of State representative of the interests concerned, makes the following Regulations in exercise of powers conferred by sections 5(1), 6(1) and 12(3) of the Employment Agencies Act 1973(**1**).

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

Citation and commencement

1. These Regulations may be cited as the Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2010 and shall come into force on 1st October 2010.

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

2. The Conduct of Employment Agencies and Employment Businesses Regulations 2003(**2**) are amended as set out in regulations 3 to 14.

Amendment to regulation 2

3. In regulation 2 (interpretation) after the definition of "publication" insert—

> ""vulnerable person" means any person who by reason of age, infirmity, illness, disability or any other circumstance is in need of care or attention, and includes any person under the age of eighteen;".

(**1**) 1973 c.35. Section 6(1) was substituted by the Employment Relations Act 1999 (c.26), section 31 and Schedule 7, paragraphs 1 and 3.
(**2**) S.I. 2003/3319, amended by S.I. 2007/3575.

Amendment to regulation 5

4. In regulation 5 (restriction on use of additional services) after paragraph (2) insert—

"(3) In addition, where the work-seeker is seeking employment as an actor, background artist, dancer, extra, musician, singer or other performer or as a photographic or fashion model and that work-seeker uses a service, for which the Act does not prohibit the charging of a fee, which includes the production of a photographic image or audio or video recording of the work-seeker, an agency or employment business providing or making provision for such service shall ensure that, for 30 days from the date of the agency or employment business entering into a contract for such a service whether written or oral—

(a) the agency or the employment business shall not charge a fee to a work-seeker for that part of the service which consists of providing or making provision for a photographic or audio or video recording of the work-seeker; and

(b) the work-seeker shall be entitled without detriment or penalty to cancel or withdraw from any contract with the agency or employment business for such a service with immediate effect by informing the agency or employment business of cancellation or withdrawal and where the work-seeker informs the agency or employment business of cancellation or withdrawal the work-seeker has no obligation to make any payment under the contract.

(4) Paragraphs (2) and (3) do not apply to a service for which a fee may be charged by virtue of regulation 26(1).".

Amendment to regulation 13

5. In paragraph (1)(b)(iii) of regulation 13 (notification of charges and the terms of offers) for the words "and the notice period required" substitute "and, as the case may be, of the notice period required under paragraph (2) of regulation 5 or of the period during which the right can be exercised under paragraph (3) of that regulation".

Amendment to regulation 14

6. For regulation 14 (requirement to obtain agreement to terms with work-seekers) substitute—

"**Requirement to obtain agreement to terms with work-seekers: Employment Businesses**

14.—(1) Before first providing any work-finding services to a work-seeker, an employment business shall obtain the agreement of the work-seeker to the terms which apply or will apply as between the employment business and the work-seeker including—

(a) a statement that the employment business will operate as an employment business in relation to the work-seeker;

(b) the type of work the employment business will find or seek to find for the work-seeker; and

(c) the terms referred to in regulation 15.

(2) Subject to paragraph (3), an employment business shall ensure that—

(a) all terms in respect of which the employment business has obtained the work-seeker's agreement are recorded in a single document or, where this is not possible, in more than one document; and

(b) copies of all such documents are given at the same time as each other by the employment business to the work-seeker who has agreed such documents, before

the employment business provides any services to the work-seeker to which the terms contained in such documents relate.

(3) Paragraph (2) shall not apply in the case of an employment business where the work-seeker has been given a written statement of particulars of employment in accordance with Part I of the Employment Rights Act 1996.

(4) An employment business may not vary any terms set out in a document issued in accordance with paragraph (2), unless the work-seeker agrees to the variation.

(5) If the employment business and the work-seeker agree to any variation in the terms set out in the documents referred to in paragraph (2), the employment business shall as soon as possible, and in any event no later than the end of the fifth business day following the day on which the employment business and the work-seeker agree to the variation, give to the work-seeker a single document containing details of the terms as agreed to be varied and stating the date on or after which it is agreed that the varied terms are to take effect.

(6) An employment business may not make the continued provision of any services by it to a work-seeker conditional on the agreement by the work-seeker to any such variation.".

Amendment to regulation 16

7. For regulation 16 (content of terms with work-seekers: Agencies), substitute—

"**Requirement to obtain agreement to terms with work-seekers and content of terms with work-seekers: Agencies**

16.—(1) Before first providing any work-finding services to a work-seeker, for which it is permitted by regulation 26(1) to charge a fee, an agency shall obtain the agreement of the work-seeker to the terms which apply or will apply as between the agency and the work-seeker including—

(a) details of the work-finding services to be provided by the agency;

(b) details of the agency's authority, if any, to act on behalf of the work-seeker, including whether, and if so, upon what terms it is (in accordance with regulation 11) authorised to enter into contracts with hirers on behalf of the work-seeker;

(c) a statement as to whether the agency is authorised to receive money on behalf of the work-seeker;

(d) details of any fee which may be payable by the work-seeker to the agency for work-finding services including—

(i) the amount or method of calculation of the fee,

(ii) a description of the particular work-finding service to which the fee relates,

(iii) the circumstances, if any, in which refunds or rebates are payable to the work-seeker, the scale of such refunds or rebates, and if no refunds or rebates are payable, a statement to that effect, and

(iv) the method of payment of the fee and, if the fee is to be deducted from the work-seeker's earnings received by the agency, the circumstances in which it is to be so deducted;

(e) a statement as to whether the work-seeker is required to give notice to terminate the contract between the work-seeker and the agency and, if so, a statement as to the length of the notice required; and

(f) a statement as to whether the work-seeker is entitled to receive notice of termination of the contract between the work-seeker and the agency and, if so, a statement of the length of the notice.

(2) In the case of an agency which is to provide the work-seeker with work-finding services to which regulation 26(5) applies, before first providing any such work-finding services to the work-seeker, the terms to be agreed, in addition to the terms in paragraph (1), are—

(a) that an agency shall not charge a fee permitted under regulation 26(5) to the work-seeker until the period referred to, as the case may be, in sub-paragraph (d) or (e) of regulation 26(5), during which the work-seeker may withdraw or cancel, has elapsed;

(b) that the work-seeker has the right without detriment or penalty to cancel or withdraw from the contract with immediate effect by informing the agency of such cancellation or withdrawal during the time period referred to, as the case may be, in sub-paragraph (d) or (e) of regulation 26(5);

(c) that an agency shall not include information about the work-seeker in a publication until—

(i) where paragraph (5)(d) of regulation 26 applies, the period referred to in that paragraph has elapsed or,

(ii) where paragraph (5)(f) of regulation 26 applies, the latter of, the date on which the period referred to in that paragraph has elapsed or, following an objection, the date on which the reasonable requirements of the work-seeker have been addressed;

(d) in relation to a contract with a work-seeker seeking employment as an actor, background artist, dancer, extra, musician, singer or other performer, under which the agency proposes to include information about the work-seeker in a publication, that—

(i) the agency shall make a copy of the information available to the work-seeker;

(ii) at the same time, the agency shall inform the work-seeker of the right to object, its effect and the time limit for exercising that right; and

(iii) for the period referred to in paragraph (5)(f) of regulation 26, the work-seeker is entitled to object to any aspect of the information relating to the work-seeker by informing the agency of an objection;

(e) in a contract to which sub-paragraph (d) applies, that where the work-seeker informs the agency of an objection, the agency shall not charge a fee or include the information in a publication until the work-seeker's reasonable requirements have been addressed (even if addressing the requirements takes longer than the period referred to in paragraph (d));

(f) in a contract to which sub-paragraph (d) applies, that where an agency makes available to the work-seeker a copy of the information referred to in that paragraph —

(i) during the period referred to in paragraph (5)(e) of regulation 26, where the period referred to in paragraph (5)(f) of regulation 26 has elapsed without an objection or where the reasonable requirements of the work-seeker have been addressed, paragraph (5)(e) of regulation 26 continues to apply; or

(ii) after the period referred to in paragraph (5)(e) of regulation 26 has elapsed, paragraph (5)(f) of regulation 26 applies from the expiry of that period until

the latter of, the date on which the period referred to in paragraph (5)(f) of regulation 26 has elapsed or, following an objection, the date on which the reasonable requirements of the work-seeker have been addressed; and

(g) an undertaking that the work-seeker is entitled to receive a full refund of the fees paid if the publication including, or proposed to include, the work-seeker's information is not produced and made available to potential hirers within 60 days from the date payment is made by the work-seeker.

(3) Any reference in paragraph (2) to the inclusion of information about a work-seeker in a publication, includes the inclusion of a photographic image or audio or video recording of the work-seeker in a publication.

(4) Paragraph (3) shall not be construed, when read with paragraph (2), as preventing an agency producing a photographic image or audio or video recording for the purpose of providing a copy of the image or recording to the work-seeker.".

Amendment to regulation 17

8. For regulation 17 (requirement to obtain agreement to terms with hirers) substitute—

"**Requirement for employment businesses to obtain agreement to terms with hirers**

17.—(1) Before first providing services to a hirer, an employment business shall agree with the hirer the terms which apply or will apply between the employment business and the hirer, including—

(a) a statement that the employment business will operate as an employment business in relation to the hirer;

(b) details of any fee which may be payable by the hirer to the employment business including—

(i) the amount or method of calculation of such fee, and

(ii) the circumstances, if any, in which refunds or rebates are payable to the hirer, the scale of such refunds or rebates, and if no refunds or rebates are payable, a statement to that effect; and

(c) details of the procedure to be followed if a work-seeker introduced or supplied to the hirer proves unsatisfactory.

(2) The employment business shall ensure that all of the terms are recorded in one or more documents and that, unless the hirer has a copy, a copy is sent to the hirer as soon as is reasonably practicable.

(3) If the employment business and the hirer agree to any variation in the terms set out in the document referred to in paragraph (2), the employment business shall, unless the hirer has a copy of that document, as soon as is reasonably practicable, give to the hirer a document containing details of the variation and stating the date on or after which it is agreed that the varied terms are to take effect.".

Amendment to regulation 19

9. For regulation 19 (confirmation to be obtained about a work-seeker) substitute—

"**Confirmation to be obtained about a work-seeker**

19.—(1) An employment business may not introduce or supply a work-seeker to a hirer unless it has obtained confirmation—