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

2003 No.

EMPLOYMENT AGENCIES, ETC.

The Conduct of Employment Agencies and Employment Businesses Regulations 2003

Made - - - -	*2003*
Coming into force	
except regulations 26(7) and 32	*6th April 2004*
regulations 26(7) and 32	*6th July 2004*

Whereas a draft of the following Regulations was laid before Parliament in accordance with section 12(5) of the Employment Agencies Act 1973(**1**) and approved by a resolution of each House of Parliament;

Now, therefore, the Secretary of State, in exercise of the powers conferred on her by sections 5(1), 6(1) and 12(3) of the Employment Agencies Act 1973(**2**) and having consulted such bodies as appear to her to be representative of the interests concerned, hereby makes the following Regulations:

PART I

GENERAL AND INTERPRETATION

Citation and commencement

1.—(1) These Regulations may be cited as the Conduct of Employment Agencies and Employment Businesses Regulations 2003.

(2) With the exception of regulations 26(7) and 32, the Regulations shall come into force on 6th April 2004.

(**1**) 1973 c. 35; section 12(5) as originally enacted was substituted by the Employment Relations Act 1999 (c. 26), Schedule 7, paragraphs 1 and 6.

(**2**) Section 5(1) was amended by the Employment Relations Act 1999 (c. 26), Schedule 7, paragraphs 1, 2(1) and (2). Section 6(1) as originally enacted was prospectively substituted by the Employment Relations Act 1999 (c. 26), Schedule 7, paragraphs 1 and 3.

(3) Regulations 26(7) and 32 shall come into force on 6th July 2004.

Interpretation

2. In these Regulations, unless the context otherwise requires—

"the Act" means the Employment Agencies Act 1973;

"advertisement" includes every form of advertising by whatever means;

"agency" means an employment agency as defined in section 13(1) and (2) of the Act(**3**) and includes a person carrying on an agency, and in the case of a person who carries on both an agency and an employment business means such a person in his capacity in carrying on the agency;

"business day" means a day other than a Saturday or a Sunday, Christmas Day or Good Friday, or a day which is a bank holiday under or by virtue of the Banking and Financial Dealings Act 1971(**4**) in that part of Great Britain;

"company" includes any body corporate (whether incorporated in Great Britain or elsewhere) and references to directors and other officers of a company and to voting power at any general meeting of a company have effect in the case of a company incorporated outside Great Britain with any necessary modifications;

"employment business" means an employment business as defined in section 13(1) and (3) of the Act and includes a person carrying on an employment business, and in the case of a person who carries on both an employment business and an agency means such a person in his capacity in carrying on the employment business;

"hirer" means a person (including an employment business) to whom an agency or employment business introduces or supplies or holds itself out as being capable of introducing or supplying a work-seeker;

"publication" means any publication whether in paper or electronic form other than a programme service within the meaning of the Broadcasting Act 1990(**5**);

"work-finding services" means services (whether by the provision of information or otherwise) provided—

(a) by an agency to a person for the purpose of finding that person employment or seeking to find that person employment;

(b) by an employment business to an employee of the employment business for the purpose of finding or seeking to find another person, with a view to the employee acting for and under the control of that other person;

(c) by an employment business to a person (the "first person") for the purpose of finding or seeking to find another person (the "second person"), with a view to the first person becoming employed by the employment business and acting for and under the control of the second person;

"work-seeker" means a person to whom an agency or employment business provides or holds itself out as being capable of providing work-finding services.

The meaning of "connected"

3.—(1) For the purposes of these Regulations a person is connected with—

(**3**) Section 13(2) was prospectively amended by the Employment Relations Act 1999 (c. 26), Schedule 7, paragraphs 1
(**4**) 1971 c. 80.
(**5**) 1990 c. 42; section 201 was amended by the Broadcasting Act 1996 (c. 42), Schedule 10, paragraph 11, and prospectively by the Communications Act 2003 (c. 21), section 360(1)(a), (b) and (2).

(a) his spouse or minor child or stepchild;

(b) any individual who employs him or is his employee;

(c) any person who is in partnership with him;

(d) any company of which he is a director or other officer and any company connected with that company;

(e) in the case of a company—

(i) any person who is a director or other officer of that company;

(ii) any subsidiary or holding company, both as defined in section 736 of the Companies Act 1985(**6**), of that company and any person who is a director or other officer, or an employee of any such subsidiary or holding company;

(iii) any company of which the same person or persons have control; and

(f) in the case of a trustee of a trust, a beneficiary of the trust, and any person to whom the terms of the trust confer a power that may be exercised for that person's benefit.

(2) For the purposes of paragraph (1)(e)(iii) a person is to be taken as having control of a company if—

(a) he or any person with whom he is connected is a director of that company or of another company which has control of it;

(b) the directors of that company or another company which has control of it (or any of them) are accustomed to act in accordance with his directions or instructions; or

(c) he is entitled to exercise, or control the exercise of, one third or more of the voting power at any general meeting of the company or of another company which has control of it.

Transitional and Saving Provisions and Revocation

4.—(1) The transitional and saving provisions in Schedule 1 shall apply.

(2) Subject to the provisions of Schedule 1, the following statutory instruments are hereby revoked—

(a) the Conduct of Employment Agencies and Employment Businesses Regulations 1976(**7**);

(b) the Employment Agencies Act 1973 (Charging Fees to Workers) Regulations 1976(**8**); and

(c) the Employment Agencies Act 1973 (Charging Fees to Au Pairs) Regulations 1981(**9**).

PART II

GENERAL OBLIGATIONS

Restriction on requiring work-seekers to use additional services

5. Neither an agency nor an employment business may make the provision to a work-seeker of work-finding services conditional upon the work-seeker—

(a) using other services for which the Act does not prohibit the charging of a fee, or

(b) hiring or purchasing goods,

(**6**) 1985 c. 6; section 736 as originally enacted was substituted by the Companies Act 1989 (c. 40), section 144(1).
(**7**) S.I.1976/715.
(**8**) S.I. 1976/714.
(**9**) S.I. 1981/1481.

whether provided by the agency or the employment business or by any person with whom the agency or employment business is connected.

Restriction on detrimental action relating to work-seekers working elsewhere

6.—(1) Neither an agency nor an employment business may (whether by the inclusion of a term in a contract with a relevant work-seeker or otherwise)—

(a) subject or threaten to subject a relevant work-seeker to any detriment on the ground that—

(i) the relevant work-seeker has terminated or given notice to terminate any contract between the work-seeker and the agency or employment business, or

(ii) in the case of an employment business, the relevant work-seeker has taken up or proposes to take up employment with any other person; or

(b) require the relevant work-seeker to notify the agency or the employment business, or any person with whom it is connected, of the identity of any future employer of the relevant work-seeker.

(2) For the avoidance of doubt, the following shall not constitute a detriment within the meaning of paragraph (1)(a)—

(a) the loss of any benefits to which the relevant work-seeker might have become entitled had he not terminated the contract;

(b) the recovery of losses incurred by an agency or employment business as a result of the failure of the relevant work-seeker to perform work he has agreed to perform; or

(c) a requirement in a contract with the agency or employment business for the work-seeker to give a period of notice which is reasonable to terminate the contract.

(3) In this regulation, "relevant work-seeker" means any work-seeker other than, in the case of an employment business, a work-seeker who is or will be employed by the employment business under a contract of service or apprenticeship.

Restriction on providing work-seekers in industrial disputes

7.—(1) Subject to paragraph (2) an employment business shall not introduce or supply a work-seeker to a hirer to perform—

(a) the duties normally performed by a worker who is taking part in a strike or other industrial action ("the first worker"), or

(b) the duties normally performed by any other worker employed by the hirer and who is assigned by the hirer to perform the duties normally performed by the first worker,

unless in either case the employment business does not know, and has no reasonable grounds for knowing, that the first worker is taking part in a strike or other industrial action.

(2) Paragraph (1) shall not apply if, in relation to the first worker, the strike or other industrial action in question is an unofficial strike or other unofficial industrial action for the purposes of section 237 of the Trade Union and Labour Relations (Consolidation) Act 1992(**10**).

Restriction on paying work-seekers' remuneration

8.—(1) Subject to paragraph (2), an agency shall not, in respect of a work-seeker whom the agency has introduced or supplied to a hirer—

(**10**) 1992 c. 52; section 237 was inserted by the Trade Union Reform and Employment Rights Act 1993 (c. 19), section 49(2) and Schedule 8, paragraph 76, and amended by the Employment Rights Act 1996 (c. 18), Schedule 1, paragraph 56(1), (15) and the Employment Relations Act 1999 (c. 26), section 9 and Schedule 4, Part III, paragraphs 1, 2(a) and (b).

(a) pay to;

(b) make arrangements for the payment to; or

(c) introduce or refer the hirer to any person with whom the agency is connected with a view to that person paying to, or making arrangements for the payment to,

the work-seeker, his remuneration arising from the employment with the hirer.

(2) Paragraph (1) shall not apply in the case of an introduction or supply of a work-seeker to a hirer where—

(a) (i) the agency is permitted by regulation 26(1) to charge a fee to that work-seeker in respect of that introduction or supply; and

(ii) the agency complies with the provisions of regulation 25 and Schedule 2; or

(b) the hirer and the agency are connected.

Restriction on agencies and employment businesses purporting to act on a different basis

9.—(1) Neither an agency nor an employment business may, in relation to the introduction or supply of a work-seeker to a hirer, purport to the work-seeker to be acting as an agency and purport to the hirer to be acting as an employment business.

(2) Neither an agency nor an employment business may, in relation to the introduction or supply of a work-seeker to a hirer, purport to the work-seeker to be acting as an employment business and purport to the hirer to be acting as an agency.

Restriction on charges to hirers

10.—(1) Any term of a contract between an employment business and a hirer which is contingent on a work-seeker taking up employment with the hirer or working for the hirer pursuant to being supplied by another employment business is unenforceable by the employment business in relation to that work-seeker unless the contract provides that instead of a transfer fee the hirer may by notice to the employment business elect for a hire period of such length as is specified in the contract during which the work-seeker will be supplied to the hirer—

(a) in a case where there has been no supply, on the terms specified in the contract; or

(b) in any other case, on terms no less favourable to the hirer than those which applied immediately before the employment business received the notice.

(2) In paragraph (1), "transfer fee" means any payment in connection with the work-seeker taking up employment with the hirer or in connection with the work-seeker working for the hirer pursuant to being supplied by another employment business.

(3) Any term as mentioned in paragraph (1) is unenforceable where the employment business does not supply the work-seeker to the hirer, in accordance with the contract, for the duration of the hire period referred to in paragraph (1) unless the employment business is in no way at fault.

(4) Any term of a contract between an employment business and a hirer which is contingent on any of the following events, namely a work-seeker—

(a) taking up employment with the hirer;

(b) taking up employment with any person (other than the hirer) to whom the hirer has introduced him; or

(c) working for the hirer pursuant to being supplied by another employment business,

is unenforceable by the employment business in relation to the event concerned where the work-seeker begins such employment or begins working for the hirer pursuant to being supplied by another employment business, as the case may be, after the end of the relevant period.