STATUTORY RULES OF NORTHERN IRELAND

2010 No. 360

EMPLOYMENT

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

Laid before the Assembly in draft

Made - - - -	*15th October 2010*
Coming into operation	*1st December 2010*

The Department for Employment and Learning(**1**), in exercise of the powers conferred by Articles 6(1), 7(1) and 10(1) of the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981(**2**) and now vested in it(**3**), and having consulted such bodies as appear to it to be representative of the interests concerned, makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as The Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations (Northern Ireland) 2010 and shall come into operation on 1st December 2010.

Amendment of the Conduct of Employment Agencies and Employment Businesses Regulations (Northern Ireland) 2005

2. The Conduct of Employment Agencies and Employment Businesses Regulations (Northern Ireland) 2005(**4**) 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—

(**1**) Formerly the Department of Higher and Further Education, Training and Employment, *see* the Department for Employment and Learning Act (Northern Ireland) 2001 c. 15 (N.I.)

(**2**) S.I. 1981/839 (N.I. 20); Articles 6(1) and 7(1) were amended by Article 30 and Schedule 7 to the Employment Relations (Northern Ireland) Order 1999 (S.I. 1999/2790 (N.I. 9))

(**3**) *See* Article 3 of the Departments (No. 2) (Northern Ireland) Order 1982 (S.I. 1982/846 (N.I. 11)) and Article 4(b) and Part II of Schedule 2 to the Departments (Transfer and Assignment of Functions) Order (Northern Ireland) 1999 (S.R. 1999 No. 481)

(**4**) S.R. 2005 No. 395 as amended by S.R. 2008 No. 76

""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;".

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 Order 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 image 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 under paragraph (3) of that regulation can be exercised".

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 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 III of the Employment Rights (Northern Ireland) Order 1996(**5**).

(4) An employment business may not vary any terms set out in any 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 any of 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 or, where this is not possible, more than one 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,

(**5**) 1996/1919 (N.I. 16) Part III has been amended by the Employment (Northern Ireland) Order 2003 No. (2902 (N.I. 15)) Articles 24, 25, 26, 35 and Schedule 6

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

(ii) where sub-paragraph (f) of regulation 26(5) applies, the later of, the date on which the period referred to in that sub-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 the 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 (5)(f) of regulation 26);

(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 sub-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 later 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) 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 on which 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.

(5) An agency shall ensure that—

(a) all terms in respect of which the agency 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 agency to the work-seeker before the agency provides any services to the work-seeker to which the terms contained in such documents relate.

(6) An agency may not vary any terms set out in any document issued in accordance with paragraph (5), unless the work-seeker agrees to the variation.

(7) If the agency and the work-seeker agree to any variation in the terms set out in any of the documents referred to in paragraph (5), the agency 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 agency and the work-seeker agree to the variation, give to the work-seeker a single document or, where this is not possible, more than one 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.

(8) An agency 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 17

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