STATUTORY RULES OF NORTHERN IRELAND

2005 No. 395

EMPLOYMENT

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

Made - - - - 17th August 2005
To be laid before Parliament under paragraph 7(3) of the Schedule to the Northern Ireland Act 2000

Coming into operation –

except regulations 26(7) and 32	*25th September 2005*
regulations 26(7) and 32	*25th December 2005*

The Department for Employment and Learning(**1**), in exercise of the powers conferred on it 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 of all other powers enabling it in that behalf and having consulted such bodies as appear to it 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 (Northern Ireland) 2005.

(2) With the exception of regulations 26(7) and 32, the Regulations shall come into operation on 25th September 2005.

(3) Regulations 26(7) and 32 shall come into operation on 25th December 2005.

(**1**) Formerly known as the Department of Higher and Further Education, Training and Employment, *see*2001 c. 15 (N.I.)
(**2**) S.I. 1981/839 (N.I. 20); Articles 6(1) and 7(1) were amended by S.I. 1999/2790 (N.I. 9), Article 30 and Schedule 7
(**3**) *See*S.I. 1982/846 (N.I. 11), Article 3 and S.R. 1999 No. 481, Article 4(b) and Part II of Schedule 2

Interpretation

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

"the Order" means the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981;

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

"agency" means an employment agency as defined in Article 11(1) and (2) of the Order 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 Northern Ireland;

"company" includes any body corporate (whether incorporated in Northern Ireland 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 Northern Ireland with any necessary modifications;

"employment business" means an employment business as defined in Article 11(1) and (3) of the Order 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; or

(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; and

"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 –

(a) his partner, minor child or stepchild;

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

(**4**) 1971 c. 80
(**5**) 1990 c. 42; section 201 was amended by 1996 c. 42, Schedule 10, paragraph 11

(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 Article 4 of the Companies (Northern Ireland) Order 1986(**6**), of that company and any person who is a director or other officer, or an employee of any such subsidiary or holding company; or

(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)(a) "partner" means –

(a) on and before 4th December 2005, a spouse or the person with whom a person lives as husband or wife, or the person with whom a person lives in a relationship which is between two persons of the same sex such that they would be regarded as living together as husband and wife if they were two persons of the opposite sex;

(b) on and after 5th December 2005, a spouse, civil partner or the person with whom a person lives as husband or wife or as if they were civil partners.

(3) 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 rules are hereby revoked –

(a) the Conduct of Employment Agencies and Employment Businesses Regulations (Northern Ireland) 1982(**7**);

(b) the Employment Agencies (Charging Fees to Workers) Regulations (Northern Ireland) 1982(**8**); and

(c) the Employment Agencies (Charging Fees to Au Pairs) Regulations (Northern Ireland) 1982(**9**).

(**6**) S.I. 1986/1032 (N.I. 6); Article 4 was substituted by S.I. 1990/1504 (N.I. 10), Article 62
(**7**) S.R. 1982 No. 253
(**8**) S.R. 1982 No. 254
(**9**) S.R. l982 No. 255

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 Order 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.

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 Article 143 of the Employment Rights (Northern Ireland) Order 1996(**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 –

(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.

(**10**) S.I. 1996/1919 (N.I. 16); as amended by S.I. 1998/1763 (N.I. 17), Article 11; S.R. 1998 No. 386 and S.I. 1999/2790 (N.I. 9), Schedule 4, Part III and Schedule 9