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Conduct of Employment Agencies and Employment Businesses Regulations (Northern Ireland) 2005 A Detailed Guide (April 2008)



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INTRODUCTION

This booklet is intended to provide general guidance on the legislation – the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981 (the 1981 Order) and the Conduct of Employment Agencies and Employment Businesses Regulations (Northern Ireland) 2005 (S.R. 2005 No. 395) (the 2005 Conduct Regulations) - which govern the conduct of the recruitment industry in Northern Ireland. Although every effort has been made to ensure the information contained in this guidance is accurate, it should not be regarded as a complete or authoritative statement of the law. Authoritative interpretations of the law can only be given by the Courts. Readers should be alert to the possibility of developments in case law that may impact on the guidance.

Copies of the 2005 Conduct Regulations are available from branches of The Stationery Office (TSO) or through TSO's Accredited Agents (see Yellow Pages for contact details). For general advice on employment-related issues, the Labour Relations Agency (LRA) can be contacted by telephoning their Head Office on 028 9032 1442 or their Regional Office on 028 7126 9639. Alternatively, you can visit the Agency's website at www.lra.org.uk.

The 1981 Order (as amended by the Deregulation and Contracting Out Act 1994, the Employment Relations (Northern Ireland) Order 1999 and the Employment (Miscellaneous Provisions) (Northern Ireland) Order 2005) and the 2005 Conduct Regulations (as amended by the Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations (Northern Ireland) 2008) set the minimum standards that employment agencies and employment businesses, who operate from premises in Northern Ireland, must meet. Detailed guidance on the specific provisions of the 2005 Conduct Regulations is contained in Section 2 of this booklet. The Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 and the Nursing Agencies Regulations (Northern Ireland) 2005 provide additional legislative requirements on employment agencies and businesses.

All employment agencies and businesses must comply with the provisions in the legislation. These provisions are designed to protect work-seekers and employers using the services provided by an employment agency or business.

The Department for Employment and Learning (the Department), which is the responsible enforcement authority in respect of the legislation, may prosecute offenders who breach the legislation and in more serious cases apply to an industrial tribunal for an order prohibiting a person from operating as an employment agency or business for up to 10 years.

The contact details of the organisations mentioned throughout this guide and a number of other organisations which you may find useful are listed under Section 4 – Useful Contacts at the back of this booklet.

SECTION 1 - USEFUL BACKGROUND INFORMATION

Those covered by the 1981 Order

The 1981 Order applies to employment agencies and businesses, whether they are carried on as commercial concerns for profit or as non-profit making bodies. This includes those that provide work-finding services for au pairs, apprentices, the self-employed, incorporated work-seekers or those covered by contracts of employment.

Employment agencies

In the 1981 Order an 'employment agency' is defined as the business of providing services (whether by the provision of information or otherwise) for the purpose of finding workers employment with employers or of supplying employers with workers for employment by them.

The Order applies to agencies engaged in a wide range of different sectors, for example, those finding work in the industrial and office sectors, entertainment and model agencies, and the executive selection functions of management consultants and search agencies. In addition, those recruitment companies that operate on-line and those that use a publication will also be covered. Once the work-seekers are engaged by the employer they have no further contractual relationship with the employment agency.

Employment businesses

The other type of recruitment activity covered by the legislation is the 'employment business'. An employment business is engaged in supplying people, who are employed by the person carrying on the employment business, to act for, and under the control of other people in any capacity. This covers the hiring out of workers on a temporary basis. It has long been associated with the supply of temporary office staff, but has also extended into many other areas, including professional and industrial occupations. However, the 1981 Order does not cover sub-contracting work, where independent contractors undertake specific tasks using their own staff, who act and remain under the contractor's direction and control.

The legislation acknowledges that many persons operating within the recruitment industry may provide services as either an employment agency or employment business, depending upon their clients' requirements.

Those excluded from the scope of the 1981 Order

The following are excluded from the scope of the 1981 Order:

- services provided by university appointments boards and certain other educational institutions, by local authorities, by trade unions, employers' organisations and certain professional bodies for their members or by charitable organisations;
- certain services provided exclusively for ex-members of HM Forces or for persons released from prisons or other institutions;
- publishing a newspaper or other publication, unless it is published wholly or mainly for the purpose of providing work-finding services;
- the display of advertisements on premises that are not otherwise used for work-finding purposes;
- the provisions of a programme service (within the meaning of the Broadcasting Act 1990); and
- gangmasters – employment businesses (or that part of the business) covered by the Gangmasters (Licensing) Act 2004.

Full details of those excluded from the legislation are set out in Article 11(4) and (5) of the 1981 Order.

Fees

Under the provisions of Article 7(1) of the 1981 Order, employment agencies and employment businesses are prohibited from charging fees to workers for finding or seeking to find them jobs. The only 2 exceptions to this provision are:

- (a) the finding of jobs for performers and certain other workers in the entertainment sector e.g. photographic or fashion models and professional sports persons. This exception is limited to the occupations listed in Schedule 3 of the 2005 Conduct Regulations; and
- (b) an employment agency is able to charge a fee to work-seekers who are companies.

Note: The legislation does not regulate the amount of the fees charged to employers or workers by employment agencies, the charges employment businesses make to employers, or to the rates paid by employment businesses to workers employed by them. However, Regulation 10 of the 2005 Conduct Regulations places certain restrictions on the charging of fees that an employment business can charge a hirer who employs a temporary worker directly, uses a different employment business to supply that worker, or introduces that worker to be employed by another person. In this regard regulation 14 requires all terms to be agreed before work-finding services are

provided between a work-seeker and an employment agency or employment business.

Regulation 26 of the 2005 Conduct Regulations applies a 7 day cooling off period to those work-seekers listed in Schedule 3, in which they can cancel or withdraw from any contract to include their details in a publication without suffering any detriment or penalty. Agencies can not take fees from a work-seeker for including their details in a publication until 7 days after the work-seekers has entered into a contract with the agency. This cooling off period applies whether the work-seeker signed the contract at a casting session or approached the agency direct.

Department for Employment and Learning enforcement policy

As mentioned earlier in this guide the Department is responsible for investigating breaches of the 1981 Order and accompanying Regulations and where necessary, taking appropriate enforcement action. The explanation of the legislation in this guidance and the information in the following paragraphs comprise the Department's approach to enforcing the standards set by the 2005 Conduct Regulations. The enforcement functions under the 1981 Order are undertaken by staff from the Department's Employment Relations Policy and Legislation Branch. The 1981 Order allows for the Department to require the production of such information as it may reasonably need to ascertain whether the 1981 Order and the 2005 Conduct Regulations are being complied with or to enable the Department to exercise its functions under the 1981 Order. The 1981 Order was amended by the Employment (Miscellaneous Provisions) (Northern Ireland) Order 2005, to provide the Department with powers to enter and inspect the premises and records of employment agencies and employment businesses. This role is undertaken by the Department's Employment Agency Inspectors.

Our enforcement policy includes investigating, as a priority, any complaint about the conduct of an employment agency or business. Unless the person making the complaint states otherwise, we treat any complaint in confidence and will not inform the employment agency or business of the identity of the person making the complaint without their consent. The Department will as a matter of course follow up all other information about possible misconduct.

If evidence of breaches of the 1981 Order or the 2005 Conduct Regulations is found, the next steps will depend upon the circumstances of the case. If the infringements are minor, or where an employment agency or business is found for the first time to be in breach of the legislation, the Department will normally explain the position, require the employment agency or business to change its arrangements to put right the infraction, warn it against further breaches in the future and where appropriate agree other corrective matters such as the repayment of monies. However, in more serious cases, this explanation will also be provided in writing. That explanation will be in terms of obligatory

requirements because the specific nature of the legislation leaves no room for recommending actions which are not mandatory. In the case of an employment agency or business which is found to have breached the legislation previously, or which has caused serious harm to those using its services through disregard for the protective provisions, the Department may take the option of prosecution in court or apply for a prohibition order.

Infringement of the legislation: prosecutions and prohibitions

Any person who:

- contravenes the prohibition on charging fees to workers;
- contravenes or fails to comply with any of the 2005 Conduct Regulations (as amended) made to secure the proper conduct of employment agencies and businesses;
- makes, causes to be made, or knowingly allows false entries to be made in any record or document that has to be kept under the 1981 Order or the 2005 Conduct Regulations; or
- fails without reasonable excuse to comply with a prohibition order;

will be guilty of an offence and liable on summary conviction to a fine of up to £5,000 for each offence.

An industrial tribunal may, on application by the Department, make an order prohibiting a person (including a company) from carrying on, or being concerned with the carrying on of, an employment agency or business for up to 10 years on the grounds that the person concerned is unsuitable because of misconduct or any other sufficient reason. A prohibition order may:

- prohibit a person from running or being concerned with an employment agency or employment business, or any description of employment agency or business specified in the 1981 Order; or
- impose certain conditions under which a person may be allowed to run an employment agency or employment business.

If you wish to make a complaint about an employment agency or business which falls within the scope of the legislation, you can complete our complaints form online at www.delni.gov.uk or you can contact the Department directly. The contact details are as follows:

Employment Relations Policy and Legislation Branch
Department for Employment and Learning
Adelaide House
39-49 Adelaide Street
BELFAST
BT2 8FD

Tel: 028 9025 7580
Fax: 028 9025 7555
Text-phone: 028 9025 7576
E-mail: employment.rights@delni.gov.uk

You can expect the staff to provide a helpful, courteous and efficient service. We welcome feedback on any part of the service we provide. If something has gone wrong with the way you have been treated or the way your complaint about a particular employment agency or business has been dealt with, please send the details to the Head of Branch at the same address.

Guidance

Copies of this and related guidance on the application of the legislation regulating employment agencies and businesses are available from the Department's website or by telephoning 028 9025 7580.

Consultation

From time to time, the Department will consult with representative bodies and trade unions directly concerned with the employment agency or business industry to discuss any proposed legislative changes, how best to deal with compliance failures and other matters of mutual concern.

SECTION 2 - CONDUCT OF EMPLOYMENT AGENCIES AND EMPLOYMENT BUSINESSES REGULATIONS (NORTHERN IRELAND) 2005 – A DETAILED GUIDE

Obligations on employment agencies and employment businesses and rights of work-seekers

Regulation 5 – Restriction on use of additional services

An employment agency or business cannot require the work-seeker to use any other service it may provide, such as training or photography, for which it can make a charge, or hiring or buying goods, as a condition for providing work-finding services to that work-seeker. A work-seeker can cancel or withdraw from these services at any time, without suffering any detriment or penalty. The work-seeker must give the provider of such services (which in some cases will be the agency or employment business but, in others, separate but connected supplier) written notice in either paper or electronic form. For services relating to the provision of living accommodation, 10 working days written notice is required. To cancel or withdraw from all other services, 5 working days written notice must be given.

Regulation 6 - Restriction on detrimental action relating to work-seekers working elsewhere

A contract between an employment agency or business and a work-seeker cannot penalise the worker for terminating or giving notice to terminate that contract. Nor can the work-seeker be required to disclose the identity of a future employer. However, this provision does not cover the loss of any benefits the worker would have received if the contract had not been terminated, the requirement to give reasonable notice and the recovery of losses arising from that termination. In relation to an employment business only these provisions do not cover a worker employed under a contract of service or apprenticeship..

Regulation 7 - Restriction on providing work-seekers in industrial disputes

An employment business must not supply a worker to carry out the duties of a worker involved in an official industrial dispute or to perform the duties of any other worker employed by the hirer who has replaced the worker on strike. However, this provision will not apply if the employment business was unaware that the hirer's worker was involved in the dispute.

Regulation 8 - Restriction on paying work-seeker's remuneration

Unless an employment agency is allowed to charge the work-seeker a fee in accordance with regulation 26 and complies with the provisions of regulation 25 and Schedule 2 to the Regulations, it cannot pay the worker either directly, or

through a person to whom the employment agency is connected, the wages earned from the employment found by the employment agency.

Regulation 9 - Restriction on agencies and employment businesses purporting to act on a different basis

When an employment agency or business is introducing or supplying a work-seeker to a hirer, it cannot act as an employment agency to the work-seeker and an employment business to the hirer, or vice versa. They must act on the same basis to both parties.

Regulation 10 – Restriction on charges to hirers

A contract term may exist between an employment business and a hirer which entitles the employment business to charge a transfer fee if the temporary worker is either:-

- (a) directly employed by the hirer (“temp-to-perm”);
- (b) supplied to the hirer through another employment business (“temp-to-temp”); or
- (c) introduced to another employer by the first employer (“temp-to-third party”).

For such a contract term to be enforceable certain conditions must apply.

The contract must provide that, instead of a transfer fee, the hirer can give notice to engage that temporary worker for a specified period of hire. During this specified hire period if there has been no supply, the terms set out in the contract will apply; otherwise the terms will be no less favourable to the hirer than those which applied before the notice was received by the employment business. The transfer fee term will also be unenforceable where the employment business does not then supply the worker to the hirer for the extended period, unless the employment business is not at fault.

Relevant period

There is also a limit on the time during which certain terms in a contract can be enforced. Any such term is unenforceable by the employment business where the worker begins that employment or is supplied by another employment business after the end of the relevant period. The “relevant period” is whichever of the following periods ends later:

- (a) 8 weeks starting from the day after the day on which the worker last worked for the hirer having been supplied by the employment business; or

- (b) 14 weeks beginning from the first day on which the worker worked for the hirer having been supplied by the employment business.

The relevant period to apply will, therefore, be determined by the length of the hire period.

Example 1:

The hire begins on 31 July **2006**, ends on **4 August 2006**, and lasted for one week;

- 8 weeks after the end of the hire period is 30 September **2006**
- 14 weeks from the first day of work is **6 November 2006**.

The relevant period therefore ends on the later date – **6 November 2006**.

Example 2:

The hire begins on 31 July **2006**, ends on **4 September 2006**, and lasted for 5 weeks + 1 day;

- 8 weeks from the end of the hire period is 31 October **2006**
- 14 weeks from the first day of work is **6 November 2006**.

The relevant period therefore ends on the later date – **6 November 2006**.

Example 3:

The hire begins on 31 July **2006**, ends on **11 September 2006**, and lasted for 6 weeks + 1 day;

- 8 weeks from the end of the hire period is **7 November 2006**
- 14 weeks from the first day of work is **6 November 2006**.

The relevant period therefore ends on the later date – **7 November 2006**.

If the hire period lasts for more than 6 weeks, the relevant period will end 8 weeks after the last day of the hire. When determining the first day on which the worker was supplied to the hirer by the employment business, any such spell of employment, which occurred prior to a period of 42 days during which that work-seeker did not work for that hirer having been supplied by that employment business, will not be included.

Regulation 11 - Entering into a contract on behalf of a client

An employment business cannot enter into a contract with a hirer on behalf of a work-seeker or on behalf of the hirer with the work-seeker. Similar restrictions apply to an employment agency, unless the person for whom it acts has given permission for the employment agency to act on his behalf. Where the employment agency acts for the work-seeker, it must be allowed by regulation 26(1) in certain circumstances to charge a fee for the work-finding services covered by the contract. Furthermore, it must inform its client, and the other party to the contract, of the terms of the contract within 5 business days of the employment agency entering into that contract. However, when agreeing the terms of a contract an employment agency cannot act on behalf of both the work-seeker and the hirer.

Regulation 12 – Prohibition on employment businesses withholding payment to work-seekers on certain grounds

An employment business cannot withhold or threaten to withhold the whole or any part of any payment due to workers for work they have carried out on any of the following grounds:

- (a) the hirer has not paid the employment business for supplying the temporary worker;
- (b) the worker has failed to produce a document authenticated by the hirer (e.g. a timesheet). However, the employment business may take action to satisfy itself that the worker did, in fact, work for the particular period;
- (c) the worker did not work during any period other than that to which the payment relates; or
- (d) any matter within the control of the employment business.

Requirements to be satisfied before services are provided

Regulation 13 - Notification of charges and the terms of offers

When the employment agency or business first offers to provide its services to a work-seeker, if it is to make a charge for providing its services or goods, it must provide the following information to the work-seeker:

- (a) whether it is prohibited by the 1981 Order from charging for that work-finding service;
- (b) what other services or goods may be provided, for which the employment agency or business can charge a fee and details of that fee, including the amount and method of calculation, the person to whom the fee is payable,

description of the services or goods, and details of when a refund may be payable. The employment agency or business must also give further notice of the introduction or variation in those fees, and set out the work-seeker's right to cancel or withdraw from the service and the length of notice period required.

If an employment agency or business offers any gift or benefit to work-seekers to encourage them to use its services, it must provide details of the terms under which that gift or benefit is offered.

Regulation 14 - Requirement to obtain agreement to terms with work-seekers

Before the employment agency or business first provides work-finding services, it must agree with the work-seeker the terms that will apply. These include:

- (a) whether the service provided will be as an employment agency or business;
- (b) the type of work that the employment agency or business will find or seek to find for the work-seeker; and
- (c) the content of the terms agreed (see notes on regulations 15 and 16);

Unless 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, all terms of the agreement should be recorded in a single document, if possible. (**Note:** if a number of documents record the terms, they should be retained together.) Copies of all those documents must be given to the work-seeker before the work-finding services begin.

The terms set out in the document cannot be varied without the agreement of the work-seeker to whom they relate. If the parties agree to any such variation, the employment agency or business must, within 5 business days of the date of that agreement, give the work-seeker a single document setting out the terms as agreed to be altered and the date those changes will take effect.

The employment agency or business must not make the continued provision of any of its services conditional on the work-seeker agreeing to accept any such variation. Regulation 14 does not apply where the only service provided to the work-seeker by the employment agency is the provision of information in the form of a publication.

Where an employment agency is to provide the work-seeker with work-finding services for which it is allowed to charge a fee in accordance with regulation 26, it also needs to agree the terms set out in regulation 16.

Whilst the 2005 Conduct Regulations do not explicitly require employment agencies or businesses to provide information such as terms and conditions in the work-seeker's native language, it is recommended that where there is any doubt over the work-seeker's ability to understand English they take all reasonable steps to do so in order to ensure that the work-seeker understands the commitments being made.

Regulation 15 - Content of terms with work-seekers: Employment businesses

The terms that must be agreed in accordance with regulation 14 include:

- (a) if the work-seeker is to be employed by the employment business under a contract of service, or for services, or an apprenticeship, and the terms and conditions to apply;
- (b) an undertaking to pay the work-seeker for any work carried out;
- (c) the length of notice of termination the work-seeker is required to give and entitled to receive in respect of the assignments;
- (d) either the work-seeker's pay rate, or the minimum rate to be expected;
- (e) the intervals at which the earnings will be paid; and
- (f) details of any entitlement to paid holidays.

Regulation 16 - Content of terms with work-seekers: Agencies

For an employment agency which is permitted by regulation 26(1) to charge the work-seeker a fee for work-finding services, the terms covered by regulation 14 must include information stating:

- (a) details of the work-finding services to be provided;
- (b) details of the employment agency's authority and terms (in accordance with regulation 11) to act for the work-seeker and, if it is authorised to represent the work-seeker in negotiations with hirers;
- (c) if the employment agency is authorised to receive money on behalf of the work-seeker;
- (d) details of any fee to be charged to the work-seeker, including the amount or method of its calculation, the work-finding service it relates to, the circumstances of any refund or a statement if no refund is payable; the method of payment of the fee; and

- (e) the length of any notice of termination the work-seeker is required to give
- (f) or entitled to receive.

Regulation 17 - Requirement to obtain agreement to terms with hirers

Apart from the provision of information in the form of a publication, before providing services to a hirer, the employment agency or business and the hirer must agree the terms that will apply, including information on:

- (a) whether the service will be as an employment agency or business;
- (b) any fee payable by the hirer, the amount or method of its calculation, and the circumstances of any refund, or a statement if no refund is payable;
- (c) procedure to be followed if the work-seeker supplied by the employment business proves unsatisfactory; and
- (d) the employment agency's authority and terms (in accordance with regulation 11), if any, it has to represent the hirer in negotiations with work-seekers.

All the terms must be recorded in a single document.

(Note: If the terms comprise of more than one item, they should be retained as a single document.) If the hirer does not have a copy of the document, or details of any variation of the terms, the employment agency or business should provide a copy of the relevant document as soon as is reasonably practicable.

Requirements to be satisfied in relation to the introduction or supply of a work-seeker to a hirer

Regulation 18 - Information to be obtained from a hirer

To be able to select a suitable work-seeker for a position, an employment agency or business must obtain sufficient information from the hirer. The details required include:

- (a) the hirer's identity and nature of the hirer's business;
- (b) the date of commencement and duration of the work;
- (c) details of the position, type of work, location, hours of work, and any risks to health and safety that the hirer is aware of and the steps taken to prevent or control them;

- (d) the experience, training, qualifications and any authorisation the hirer believes are necessary, or which are required by law, or by any professional body; and
- (e) any expenses payable to the work-seeker, and where an employment agency is providing the services, the minimum pay rate and other benefits offered, when payments will be made, and, if appropriate, the length of notice which the work-seeker would be entitled to receive or required to give.

Regulation 19 - Confirmation to be obtained about a work-seeker

Before introducing or supplying a work-seeker to a hirer, an employment agency or business must confirm:

- (a) the work-seeker's identity, that he/she has the necessary experience, training, qualifications and any authorisation required by the hirer, law or any professional body to carry out the work; and
- (b) that the work-seeker is willing to work in the position to be filled.

In fulfilling the requirements of this regulation employment agencies and businesses have no authority to retain original documents, such as passports or any other national identity documents and should be alert to guidance on this matter available from the Home Office. See Section 3 of this guide entitled 'Other Legal Requirements' for Home Office contact details.

Regulation 20 - Steps to be taken for the protection of the work-seeker and the hirer

Before introducing or supplying a work-seeker to a hirer, the employment agency or business must have taken all reasonable steps to ensure that both the work-seeker and hirer are aware of any requirements, by law or a professional body, which must be satisfied by the hirer or work-seeker for the work-seeker to carry out the work.

In addition to any requirement under health and safety legislation, the employment agency or business must make all reasonable enquiries to ensure that the interests of the work-seeker or hirer would not be harmed if the work-seeker were to carry out the work.

If an employment business receives information which gives it reasonable grounds to believe that the work-seeker **is unsuitable** to work for the hirer, it must without delay inform the hirer of that information and end the supply of that work-seeker. However, if that information indicated that the work-seeker **may be unsuitable**, the employment business must without delay inform the hirer of that

information and start further enquiries to check the work-seeker's suitability. It should inform the hirer of the further enquiries and of any further information received. If those further enquiries give reasonable grounds for believing that the work-seeker is unsuitable, the employment business must, without delay, inform the hirer and end the supply.

Where an employment agency has introduced a work-seeker to a hirer, and receives information, within 3 months from the date of that worker's introduction, indicating that the work-seeker is or may be unsuitable for the position in which he/she is employed, it must inform the hirer without delay.

"Without delay" means on the same day, or where that is not reasonably practicable, on the next business day.

Regulation 21 - Provision of information to work-seekers and hirers

When an employment agency or business submits a work-seeker to a hirer, it must provide (orally or otherwise) the hirer with all information about that work-seeker which is required by regulation 19. An employment business must include information on whether the work-seeker will be employed under a contract of service, for services, or an apprenticeship.

The employment agency or business must also give (orally or otherwise) to the work-seeker, at the same time, information about the hirer which is required by regulation 18. An employment business that had not already agreed a pay rate must inform the work-seeker of the rate it will pay him to work in that position. If the employment agency or business had not provided any of that information in paper form or by electronic means at the time the work-seeker was proposed to the hirer, the employment agency or business must do so before the end of the third business day following the day on which the information was given to the hirer or work-seeker.

Unless the work-seeker or hirer requests otherwise, these provisions do not apply if the work-seeker is to be introduced or supplied to work in the same position with the same hirer that he/she had worked with within the previous 5 business days and the only new details concern the dates that the work is to begin and end.

For short term assignments, i.e. lasting 5 working days or less, employment businesses still need to send written notifications but less information is required in these cases. If a short term assignment extends to more than 5 days then the full information under regulation 21 is required.

If an employment business has already obtained from the work-seeker all the essential information regarding identity, experience, training, qualifications and any necessary authorisations (e.g. where the work-seeker is already registered

with the employment business), and where the assignment is intended to last 5 working days or less, it only needs to give to the hirer (orally or in writing) the name of the work-seeker and written confirmation that it has obtained this information (i.e. the work-seekers' identity, experience, training, qualifications and any necessary authorisations).

Similarly, if an employment business has already provided all the essential information regarding the type of work, experience, training, qualifications and any authorisations necessary, together with any risks to health and safety and the rate of pay to a work-seeker (e.g. when the work-seeker was placed on a previous, identical assignment), and where the assignment is intended to be for 5 working days or less, and that information remains unchanged from when it was first provided, the employment business only needs to provide (on paper or electronically) the work-seeker with the identity of the hirer, the nature of the hirer's business (if applicable), the date on which the work-seeker must start work and the duration or likely duration of the work.

However, where an assignment is extended beyond 5 days, the outstanding information must be provided no later than the end of the eighth day of the assignment or, where the assignment ends sooner, the end of that assignment.

The Regulations do not specify how employment businesses should provide the essential information regarding the work-seeker and the type of work in order to comply with the lighter information procedure provided by them.

It may, however, be helpful to summarise the information requirements under different categories:

1. Full Requirements (i.e. as under regulation 21(1))

These requirements apply where the assignment does not fall under categories 2 and 3 below.

The agency or employment business must provide the following information in writing:

(a) To the hirer:

All information relating to the following-

- Identity of work-seeker, his/her relevant experience, training, qualifications, authorisations, and confirmation that s/he is willing to work in the position offered.
- For an employment business, status of work-seeker to be supplied (e.g. contract of service or contract for services).

(b) To the work-seeker:

All information relating to the following-

- Identity of hirer, nature of hirer's business, date on which work will commence, duration of work, position to be filled, known health & safety risks, experience, training, qualifications and authorisations required, expenses to be paid to him/her and details of remuneration, etc.

2. No Requirements, i.e. repeat assignments (within 5 business days), where the job position and hirer are the same and the relevant information is unchanged. (i.e. the position under regulation 21(3))

This applies to repeat business- where the agency or employment business have supplied a work-seeker to the same client within the **last 5 days**. Under this scenario, there is no requirement on the employment business or agency to provide any further information.

3. Partial Requirements, i.e. short assignment (5 business days or less) (i.e. the position under regulation 21(4))

This applies to assignments of 5 days duration or less. The employment business must provide the following information:

(a) To the hirer:

- Name of work-seeker; and
- Written confirmation of having obtained the following-

Identity of work-seeker, his/her relevant experience, training, qualifications, authorisations, and confirmation that s/he is willing to work in the position offered.

Note: in this context, "confirmation" means that the employment business must confirm to the hirer that the employment business has already obtained this information, rather than providing the information itself.

(b) To the work-seeker in writing (where the previous information was provided in writing and it remains unchanged)

All information relating to the following-

- Identity of hirer, nature of the hirer's business (if applicable), the date on which work will commence and the duration or likely duration of work.

Note:

If there is a short assignment (i.e. 5 business days or less), where the work-seeker has not worked for that hirer previously, then the full information requirements are applicable in relation to work-seekers. However the partial requirements may also be applicable in situations where the work-seeker has been introduced to the hirer but not supplied.

Regulation 22 - Additional requirements where professional qualifications are required or where work-seekers are to work with vulnerable persons

In addition to regulations 18-21, regulation 22 places further obligations where the work-seeker is required to possess qualifications or authorisation by law or a professional body to work in a particular job; if the position involves working with young people, caring for the elderly or infirm, or working with any person who is in need of care and attention. The additional obligations require the employment agency or business to obtain and to offer to the hirer:

- (a) copies of the work-seeker's relevant qualifications or authorisations;
- (b) 2 references from persons, not related to the work-seeker, who have agreed that the references can be disclosed to the hirer; and
- (c) where the work-seeker is to work with vulnerable persons, the employment agency or business has taken all reasonable steps to confirm that the work-seeker is not unsuitable for the work.

We would expect that, when complying with this regulation, employment agencies or businesses introducing or supplying work-seekers to be employed as nannies, babysitters or other childcare workers, to **normally** contact the Protection of Children and Vulnerable Adults (POCVA) Team and request they undertake a check on those work-seekers. If an employment agency or business has taken all reasonable steps to obtain 2 references but has been unable to do so, it should comply with those requirements as far as it is able, inform the hirer that it is unable to comply fully and give details of the efforts taken to attempt to comply.

NB The ability of limited company contractors to opt out of the 2005 Conduct Regulations under regulation 32(9) does not apply where the limited company contractor, or the work-seeker to be supplied by them, is required to work with vulnerable persons – regulation 32(12).

Special situations

Regulation 23 - Situations where more than one employment agency or business is involved

Where an employment agency or business agrees with another for the provision of work-finding services, it must make enquiries and establish that the other is suitable to act as an employment agency or business. Both must agree whether they are to act as an employment agency or business.

If one employment agency (the first employment agency) is permitted by regulation 26(1) to charge the work-seeker a fee, it must confirm that the hirer has been informed that any payment due to the work-seeker must be paid to the work-seeker or to that employment agency. If both agencies agree that the second employment agency may receive that payment, the second employment agency must pass that money to the first employment agency within 10 days of receipt; and, provided the appropriate legislation covering the agreement between the 2 agencies does not prevent it, they have agreed that the work-seeker may take legal action against the second employment agency, if it were to fail to pass on any money due to the work-seeker. The agreement between the 2 agencies must be recorded in paper or electronic form.

The first employment agency or business cannot sub-contract any of its responsibilities under the contract with a work-seeker or hirer to another employment agency or business unless it has the prior consent of that work-seeker or hirer; the terms to be sub-contracted are recorded in a single document, and the first employment agency or business has given the work-seeker or hirer a copy of that document.

Regulation 24 - Situations where work-seekers are provided with travel or required to live away from home

An employment agency or business cannot arrange for an au pair to be employed, if the au pair is required to repay the employment agency or business the fare between the au pair's home and place of work or vice versa out of the au pair's earnings.

Apart from where the work-seeker is to be employed by the hirer under a contract of employment, the employment agency or business must not arrange for the work-seeker to take up employment with the hirer, if the work-seeker must live away from home. However, there are certain exceptions to this rule – where the employment agency or business has taken all reasonable steps to ensure that suitable accommodation will be available during the employment; the work-seeker has details of the accommodation available, including terms of the offer and costs; and arrangements have been made for the work-seeker to travel to the accommodation.

In addition, where the worker is not the employee of the hirer, or is under 18 years of age, and the employment agency or business has arranged free transport or payment of the worker's fares, when the work ends, or does not start, the employment agency or business must either arrange free travel for the worker's return journey or pay the return fare, or obtain an undertaking from the hirer to make those arrangements. However, if the hirer does not comply with his undertaking, the employment agency or business must either arrange free travel for the return journey or pay the fare.

Where the work-seeker is looking for employment as an au pair or in private domestic services, the employment agency or business must ensure that, if the work-seeker requests any reasonable information about a particular vacancy, the information is given.

An employment agency or business cannot introduce or supply a worker under 18 years of age, where the job requires him/her to live away from home, unless the parent's or guardian's consent has been given. However, this provision does not apply where a licence is required for that worker to travel abroad to perform for profit.

If the work-seeker is to be found work, which requires him to be loaned money, either by the employment agency or business or hirer, to pay for travel or other expenses, the sum to be repaid cannot be greater than the amount of the original loan. The employment agency or business must provide the work-seeker with all details it has of the terms of the loan and the repayment.

Client accounts and charges to work-seekers

Regulation 25 - Client accounts

An employment agency can only request or receive money on behalf of a worker, who is employed in an occupation in which a fee can be charged, where that money is earnings from work and the employment agency maintains client accounts. If an employment agency receives any money on behalf of a worker it is not permitted to accept, it must pay the money to that worker, to an employment agency allowed to receive the money, or to the person from whom it was received, within 2 business days of receipt.

All money received by the employment agency on behalf of the worker, other than cash paid to the worker within 2 business days of receipt, cheques and banker's drafts payable to the worker must be paid into a client account within 2 business days of receipt. All cheques and banker's drafts must be sent to the worker to whom they are payable within 2 business days of receipt.

When an employment agency makes a payment to a worker in accordance with the 2005 Conduct Regulations, it must give the worker a statement setting out details of when the payment was received, from whom it was received, the work to which it relates, and any fees or deductions made by the employment agency. All payments made by the employment agency to the worker or into a client account, apart from any deductions required by law, must be made without deductions. However, an employment agency, which is allowed to charge the worker a fee, can deduct such a sum from any money due to the worker, provided that the worker's contract agrees that such a deduction may be made. An employment agency that receives money on behalf of a worker, which is paid into a client account, may only be held for 10 days, or for any longer period as requested by the worker.

If a worker requests that a payment be made from the money held by the employment agency on his behalf, the employment agency must make that payment within 2 business days of receiving the request. Where an employment agency holds money on behalf of a worker for more than 30 days from the date it was received, it must, by the end of the thirty second day, provide the worker with a statement setting out the amount held at the close of the thirtieth day. It must continue to provide such statements at intervals of no more than 30 days until all the money held has been paid to the worker. Where a cheque made payable to the employment agency is received by the employment agency on behalf of a worker, the periods of 10 and 30 days start with the day on which the cheque is cleared.

All invoices issued by an employment agency in respect of work carried out by a worker must state that, if payment is to be made by cheque or banker's draft, the cheque or draft must be made out to the employment agency's client account.

An employment agency cannot request or receive a hirer's deposit, unless it would be money that the employment agency was entitled to request or receive on behalf of a work-seeker, if it became payable to the work-seeker. Any such deposit received by the employment agency must be paid into a client account within 2 business days of receipt. Where an employment agency receives a hirer's deposit that it is not entitled to receive, it must pay that money to an employment agency allowed to receive such a payment, or to the person from whom it was received, within 2 business days of receipt. Any hirer's deposit received by the employment agency is held in trust for the work-seeker until it becomes payable to him or the hirer as provided under the terms of any contract between the work-seeker and the hirer. Where a worker becomes entitled under the terms of his contract with the hirer to any deposit paid to the employment agency, for the provisions of the 2005 Conduct Regulations, the employment agency will be regarded as having received that money on the day on which the worker became entitled to it.

Regulation 26 - Circumstances in which fees may be charged to work-seekers

The restriction on charging fees to work-seekers does not apply to any fee charged by an employment agency for providing work-finding services to a work-seeker employed in occupations within the entertainment, modelling, etc, sectors, listed in Schedule 3 of the 2005 Conduct Regulations. Such a fee can only be charged from the worker's earnings in any employment which the employment agency has found for him. The restriction on charging fees will also not apply to a charge for work-finding services made by an employment agency to a work-seeker that is a company and the employment is in an occupation **not** covered by Schedule 3. However, the employment agency cannot make a charge to a worker where it, or any person connected with it, charges a fee to the hirer for supplying or introducing that worker to him. In addition, where the employment agency is connected to the hirer, such a charge can only be made if, before providing the service to which the charge is to be made, the employment agency informs the work-seeker of that connection.

Under certain circumstances an employment agency is permitted to charge a fee to a work-seeker for including information about him in a publication, which is designed either to find the work-seeker work in any of the occupations listed in Schedule 3 or to provide hirers with information about work-seekers looking for work in those occupations. Such a fee may only be charged where the publication is the only work-finding service provided by the employment agency, or the fee charged to the work-seeker is no more than an estimate of the cost of producing and circulating the publication arising from the inclusion of that work-seeker's details in the publication. In addition to other requirements in the 2005 Conduct Regulations which may apply, the employment agency must make available to the work-seeker a copy of a current edition of that publication, before it enters into a contract with the work-seeker.

Work-seekers in occupations listed in Schedule 3 will have a 7 day cooling off period in which they can cancel or withdraw from any contract to include their details in a publication without suffering any detriment or penalty by informing the agency that they have cancelled or withdrawn from the contract. Agencies will no longer be able to take fees from a work-seeker for including their details in a publication until 7 days after the work-seeker has entered into a contract with the agency. The cooling off period applies whether the work-seeker signed the contract at a casting session or approached the agency direct.

There are no restrictions on charging fees to work-seekers for the purchase of or subscription to a publication which contains information about employers provided that this is the only work-finding service the employment agency offers to the work-seeker and a copy of the current edition has been made available to the work-seeker before he has purchased or subscribed to it. However, if the publication is in electronic form, the work-seeker must be given access to a current edition.

Miscellaneous

Regulation 27 - Advertisements

Every advertisement made by an employment agency or business must include their full name, either audibly or in writing (depending on the media used) and stating if it is acting as an employment agency or business. The employment agency or business must not place an advertisement, which includes details of positions unless it has information about all the specific positions included in the advertisement; and has been given authority by the hirer concerned to find work-seekers for the position advertised. Where the advertisement gives rates of pay, it must also state the nature of the work, its location and the minimum experience, training or qualifications which the work-seeker needs to have to receive those rates of pay.

Regulation 28 - Confidentiality

An employment agency or business must not disclose any information about a work-seeker, including to his current employer, without his prior consent unless it is:

- (a) to provide work-finding services for that work-seeker;
- (b) for the purposes of any legal proceedings (including arbitration); or
- (c) in the case of a work-seeker, who is a member of a professional body, the provision of information to that professional body.

The only exceptions to this would be where the employment agency or business is allowed under the provisions of the 1981 Order, the 2005 Conduct Regulations or any other piece of legislation dealing with the disclosure of information, such as the Data Protection Act 1998, to disclose confidential information about a work-seeker. If an agency receives information which suggests that a work-seeker they have supplied may be unsuitable for the position (i.e. information under regulation 20 – Steps to be taken for the protection of the work-seeker and the hirer), their obligation to inform the hirer takes precedence over the general prohibition on disclosing the information without the work-seekers consent in regulation 28.

Regulation 29 - Records

An employment agency or business must keep sufficient records to show that it has complied with all the provisions of the 1981 Order and the 2005 Conduct Regulations. This includes details relating to applications received from work-seekers, hirers, and its dealings with other employment agencies and businesses. These records must be kept for at least one year after their creation and, in the case of the details in respect of applications from work-seekers or hirers; they must be retained for at least one year after the date that the employment agency or business last provided it services to the applicant. However, an employment agency or business is not required to keep details of a work-seeker or hirer if it takes no action in respect of that application.

The employment agency or business may either keep those records at the premises where it trades, or elsewhere. If not retained on its premises, they must be readily accessible by the employment agency or business and can be delivered to the trading premises to which they relate within 2 business days of being requested. The records can be kept in electronic form provided they can be reproduced in a legible form. Details of the record-keeping requirements can be found in Schedules 4-6 of the 2005 Conduct Regulations.

These record-keeping requirements do not apply to the retention of client account records for modelling and entertainment agencies, which must be kept for a minimum of 6 years. The requirements for those records are set out in paragraph 12 of Schedule 2 of the 2005 Conduct Regulations. Details of all the record-keeping requirements relating to client accounts can be found in Schedule 2.

When making decisions about the retention of work-seeker records beyond the limits required by the 2005 Conduct Regulations, employment agencies and businesses should also take account of other legislative requirements, such as fair employment monitoring records which must normally be retained for at least 3 years.

Records may be kept in electronic form provided the information is capable of being produced in legible form.

Regulation 30 - Civil liability

If an employment agency or business fails to comply with any of the provisions of either the 1981 Order or the 2005 Conduct Regulations, which causes damage or loss to another person, that person can sue the employment agency or business for damages arising from a breach of the legislation. The term "damage" in this regulation includes the death of, or injury to, any person (including any disease and any impairment of that person's physical or mental condition).

Regulation 31 - Effect of prohibited or unenforceable terms and recoverability of monies

Where an employment agency's or business' contracts contain any term which is either prohibited or made unenforceable by the 2005 Conduct Regulations, the remainder of the contract may continue to apply to the parties concerned, if the contract is capable of continuing in existence without that term. If a hirer has paid any money to an employment business under a contractual term, which is unenforceable under regulation 10 (restriction on charges to hirers), the hirer is entitled to recover that money.

Regulation 32 - Application of the Regulations to work-seekers which are incorporated

With effect from 25 December 2005 the 2005 Conduct Regulations have applied to work-seekers who are incorporated (i.e. limited company contractors). Therefore, any reference to a work-seeker in the 2005 Conduct Regulations also includes a work-seeker that is a limited company. Consequently, certain regulations are modified where the work-seeker is a limited company. These require that where there is a reference to the "work-seeker" in the 2005 Conduct Regulations, it includes a limited company contractor and, where appropriate, the person who is, or would be, supplied by the work-seeker to carry out the work.

However, the 2005 Conduct Regulations provide that limited companies, and those persons whose services they supply, can agree not to be covered by the 2005 Conduct Regulations. If they do exercise the choice not to be covered, then both the limited company, and the worker to be supplied, must give notice to the employment agency or business of the decision, before they are either introduced or supplied to a hirer. A person supplied to carry out the work by the work-seeker, which is a company, can withdraw that notice to the employment agency or business by giving notice of its withdrawal. However, the notice of the withdrawal will not be effective until after the limited company contractor/person working through the limited company contractor stops working in that position.

The opt-out provisions do not apply to a person, who is a limited company contractor, or is supplied by the limited company contractor to attend or care for any person either under 18 years of age or, by virtue of age, infirmity or in any other circumstances, is in need of care and attention. An employment agency or business may not make the provision of its work-finding services conditional upon either a limited company, or the worker to be supplied, giving notice to opt out of the 2005 Conduct Regulations. This regulation has been effective from 25 December 2005.

Where an incorporated work-seeker gives notice that the Regulations shall not apply, the agency or employment business proposing to introduce or supply that

work-seeker to a hirer, must inform that hirer that such an agreement exists and the Regulations do not apply.

Regulation 33 - Electronic communications and other communications

Unless expressly stated in the 2005 Conduct Regulations, any requirement to notify a person of any matter, to give or send a document, to provide a person (hirer or work-seeker) with information or make enquiries and receive responses can be discharged in writing, either on paper or by electronic means.

Schedule 1

Transitional and saving provisions

The Transitional and Saving Provisions describe how the 2005 Conduct Regulations apply to a contract in existence before the 2005 Conduct Regulations came into operation.

Interpretation

“Existing contract” is one entered into between an employment agency or business and either a work-seeker or hirer before the date on which the 2005 Conduct Regulations came into operation, i.e. 25 September 2005

“Ongoing supply” is the supply of a temporary worker to a hirer by an employment business, which was in progress at the date the 2005 Conduct Regulations came into operation, and continued after that date.

“Transitional period” is the period of 3 months from 25 September 2005 to 24 December 2005. There is no transitional period for regulations 26(7) and 32, which have effect from 25 December 2005.

Application to existing contracts

The 2005 Conduct Regulations apply to all existing contracts from the date the Regulations came into operation, apart from the following, which did not apply to existing contracts during the transitional period:

Regulation 5 - Restriction on use of additional services;

Regulation 6(1) - Restriction on detrimental action relating to work-seekers working elsewhere;

Regulation 10 - Restriction on charges to hirers;

Regulation 12 - Prohibition on employment businesses withholding payment to work-seekers on certain grounds;

Regulation 26 - Circumstances in which fees may be charged to work-seekers; and

Regulation 28(2) - Confidentiality.

Provisions for regulation 10

After the end of the transitional period 24 December 2005 regulation 10 will not apply to any right which had accrued on or before that date under the terms of an existing contract, which is described in that regulation.

From 25 December 2005, under certain circumstances, an existing contract between an employment business and a hirer, which does not provide for an extension of the hire period as required under regulation 10, may be regarded as having satisfied that requirement. That requirement would be satisfied where the employment business informed the hirer that, instead of paying a transfer fee, the hirer could employ the work-seeker for a specified hire period. The hirer must have been notified of this choice after the 2005 Conduct Regulations took effect but before the worker began employment directly with the hirer, or was supplied through another employment business.

Savings in respect of existing contracts

As some provisions in the 2005 Conduct Regulations did not apply during the transitional period, the following provisions of the Conduct of Employment Agencies and Employment Businesses Regulations (Northern Ireland) 1982 (the 1982 Conduct Regulations) remain in operation until 25 December 2005 in respect of existing contracts:

Regulation 2(2) – General obligations;

Regulation 4(5) – Fees; and

Regulation 9(9) and 9(10) – Obligations in respect of hirers.

In addition, the Employment Agencies (Charging Fees to Workers) Regulations (Northern Ireland) 1982 remain in operation in respect of any existing contract during the transitional period.

Ongoing supplies and first occasions of supply

The following regulations only apply to the supply of workers by an employment business which began after the 2005 Conduct Regulations came into operation:

Regulation 7 - Restriction on providing work-seekers in industrial disputes;

Regulation 18 - Information to be obtained from a hirer;

Regulation 19 - Confirmation to be obtained about a work-seeker;

Regulation 20 - Steps to be taken for the protection of the work-seeker and the hirer; and

Regulation 22 – Additional requirements where professional qualifications are required or where work-seekers are to work with vulnerable persons.

Certain provisions of the 1982 Conduct Regulations remain in operation after 25 September 2005 for an “ongoing supply”. These are: regulation 10(4) – the requirement to give a worker a written statement incorporating any changes to terms and conditions of employment without delay; and regulation 9(7) - the prohibition on supplying workers to replace those in industrial disputes.

In addition, where the terms of an existing contract with a hirer were varied, the employment agency or business, before they provided services to the hirer after the variation had been agreed, must comply with regulation 17 of the 2005 Conduct Regulations - the requirement to obtain agreement to terms with hirers.

Restriction on paying work-seekers’ remuneration and client accounts

Regulation 8 - the restriction on agencies paying workers who have been introduced or supplied to a client does not apply during the transitional period.

Regulation 25 does not apply during the transitional period, if an employment agency was not required to maintain a client account before the 2005 Conduct Regulations came into operation. In addition, regulation 7 and Schedule 2 of the 1982 Conduct Regulations continue to apply during the transitional period. Where these special provisions for regulation 25 do not have effect, **regulation 25 and Schedule 2** apply to all “relevant money” held by an employment agency from the date the 2005 Conduct Regulations came into operation. If regulation 25 or Schedule 2 required the employment agency to take action with the relevant money it held within a specified period, and the event which gave rise to that requirement occurred before the 2005 Conduct Regulations came into operation, that event should have been regarded as having taken place on the date the 2005 Conduct Regulations came into operation.

Regulation 25 and Schedule 2 apply after the end of the transitional period in respect of ‘**relevant money**’ held by an employment agency, for which it received no written request from a work-seeker to maintain a client account; and where there is a requirement in regulation 25 or Schedule 2 for the employment agency to take action within a certain period, and the event which required that action to

be taken occurred before the end of the transitional period; that event is regarded as having taken place on the first day after the end of the transitional period.

‘Relevant money’ is money held by an employment agency immediately before the date the 2005 Conduct Regulations came into operation or immediately before the day the transitional period ended and in respect of which regulation 25 or Schedule 2 required an employment agency to take action.

Miscellaneous savings

The following provisions of the 1982 Conduct Regulations remain in operation if the event requiring action to be taken under the 1982 Conduct Regulations occurred before the 2005 Conduct Regulations came into operation:

Regulations 8 and 13 - record keeping;

Regulations 3(4), 6(1), 6(2), 6(5), 6(6), 6(8)(b), 7(3), 10(5), 11(4), 12(1), 12(2) and 12(6) - the requirement to keep copies of advertisements, written statements and documents;

Regulation 5(2) - the duty to loan the return fare to a young person; and

Regulation 12(4) – responsibility to pay a worker’s return fare if an employment business has supplied that worker to work outside the UK and the hirer fails to comply with an undertaking to pay the worker’s return fare.

Schedule 2

Client accounts

Interpretation

“Accounts, books, ledgers and records” include any form of record, electronic, mechanical or otherwise, which is used as a system of bookkeeping. If the record is electronic, it must be possible to reproduce the information in a legible form.

“Accounting reference date” as defined in Article 232 of the Companies (Northern Ireland) Order 1986.

“Client” is any person for whom the employment agency acts and operates an account, which it uses to hold that person’s money; also a hirer from whom the employment agency receives a deposit.

“Client’s money” is money held or received by the employment agency on behalf of a work-seeker (including any advance against payment for work to be done by the work-seeker, where that advance is not repayable to the hirer) and

hirer's deposits. However, it does not include money to which the employment agency is the only person entitled.

Maintenance of client accounts

An employment agency can have one or as many client accounts, as it considers necessary. Every account must be in the name of the employment agency and its title must include the word 'client' and, if the account contains money for a single client, the name of that client.

The employment agency must pay into the client account any monies the employment agency needed to open or maintain it, any money to replace that drawn from it in contravention of the provisions of this regulation and any money that the employment agency is entitled to split but has not done so.

There are restrictions on how money can be withdrawn from a client account, when meeting the provisions of this Schedule. For example, that money can only be drawn from the account by a cheque or electronic transfer in the employment agency's name or by transfer to an account in a credit institution in the name of the employment agency, but not to a client account. Only money permitted to be withdrawn can be drawn on a client account. In addition, any withdrawal can only be carried out by an authorised signatory known to the credit institution holding that account.

An employment agency can, where practicable, split the money it receives, including client's money, but each amount must be treated as a separate sum; or, if the agent does not split the money, it must be paid into a client account within 2 business days of the date it was received.

The only money that an employment agency can pay into a client account is defined by regulation 25(4) and (14) or by this Schedule. Money paid into the client account, which does not meet these requirements, must be withdrawn within 2 business days of the date on which the error was discovered and then be paid to the person to whom it belongs.

An employment agency can only withdraw from a client account money required to pay the client and any payment to another person requested in writing by the client (provided that the employment agency and client have previously agreed that such payment will be made). Additionally, money can be withdrawn from the client account to reimburse the employment agency for money spent on the client's behalf at the client's written request; for the agent's fee or for a payment due to the employment agency from the client, in respect of any advance of earnings paid to the client by the employment agency. Where the client has agreed in writing to such a deduction, the employment agency should, where appropriate, provide an invoice or other written statement.

Money can also be withdrawn to repay the money used to open or maintain the account or if the money has been split to pay the person entitled to it. Additionally, if the money has been wrongly put into the account, it can be withdrawn and any money required by law to be deducted from earnings before it is paid to the work-seeker. Such money can be withdrawn, provided that the amount to be withdrawn does not exceed the total amount held in that account for the client. The transferring of money from one client account to another can only be carried out with the agreement of the client to whom the money belongs or where a work-seeker becomes entitled to a hirer's deposit paid into that account under terms of a contract with that hirer.

Accounts and records

Every employment agency is required to maintain sufficient accounts and records to show transactions relating to any clients' money received by the employment agency and any other money paid into the client account. Additionally, the accounts must show those transactions for each client and that money must be distinguishable from any other monies held or paid for that client. The accounts should also show the current balance of each client's account in the client's ledger or should ensure that this can readily be obtained.

All transactions must be appropriately recorded in a client's cash account or a client's column of a cash account and in a client's ledger or a client's column of a ledger. No other transactions may be recorded in that account, ledger or column. All other transactions should be recorded separately in whatever form the employment agency chooses to maintain (i.e. account, ledger or cash account column).

In addition to those accounts, ledgers and records, every employment agency must keep a record, and copies, of all invoices and statements in respect of payments made from the client's account. In keeping such records, the employment agency must distinguish between fees and expenditure, delivered or made by the employment agency to its clients.

Every employment agency must, within 21 days of the end of each calendar month compare the total of the balances shown by the clients' ledger accounts of the liabilities to the clients, with the cash account balance as at the last day of that calendar month; if there is any difference between these two balances, the employment agency must produce a statement explaining the cause; the employment agency must reconcile the cash account balances with the balance shown on statements and passbooks of all client accounts, and money held elsewhere, and any difference between the two must be explained; and finally, the employment agency should take appropriate action to rectify any differences found.

Inspection and report

Every employment agency that is required to keep accounts and records as specified in this Schedule must arrange for them to be inspected and reported upon by an independent person, who is a member of one of the bodies listed in Article 257D of the Companies (Northern Ireland) Order 1986, within 10 months of the end of the accounting period,. The employment agency must ensure that that person's rights and duties are set out in the letter of engagement. Details of the terms to be included are set out in paragraph 10(2) of this Schedule. The employment agency must undertake to provide all the necessary accounts and supply whatever additional information may be requested by that person. Agencies that are required to maintain client account(s) must keep a copy of the reporting accountant's most recent report displayed at each of their premises so that it can be readily seen. However, this report does not have to include the information concerning the requirements that the employment agency has not complied with.

Accounting period

If the employment agency has client accounts or accounts established prior to the 2005 Conduct Regulations coming into operation, the first accountancy period will begin the day after the Regulations came into operation. It will end on a day not more than 12 months after that date, or if the employment agency is incorporated under the Companies (Northern Ireland) Order 1986, its accounting reference date, whichever is the sooner. However, if the client account(s) were created on or after the 2005 Conduct Regulations came into operation, the accounting period will begin on the day the first account was created. It will end on a day not more than 12 months after that date, or if the employment agency is incorporated under the Companies (Northern Ireland) Order 1986, the employment agency's accounting reference date, whichever is the sooner. All subsequent accounting periods will begin on the day immediately after the end of the last period and end with a date no less than 6 months and not more than 12 months after that date. In the event of an employment agency closing its only client account on a date less than 6 months after the previous accounting period, that period will end on the day the account was closed.

Preservation of client account records

Employment agencies that are obliged to maintain client account(s) under the 2005 Conduct Regulations must keep copies of all accounts, books, ledgers and records; copies of all invoices and statements issued to clients and all statements printed and issued by the credit institution, which holds the relevant client account; records falling under the reconciliations required under this Schedule and reports to the employment agency by accountants. All such records must be held for at least 6 years.

These records must be kept at either the employment agency's business premises or elsewhere as long as they are easily accessible and that it is reasonably practicable for any employment agency member of staff to arrange for them to be delivered to those premises. Agencies may keep the information in electronic form so long as it can be reproduced in a legible form and, if no hard copy is kept, that this reproduction (with reasonable notice) can be printed.

Interest

The employment agency is required to notify a client of any interest earned on any sum being held on behalf of that client in a client account for more than 10 days.

Schedule 3

Occupations in respect of which employment agencies may charge fees to work-seekers.

Schedule 4

Particulars to be included in an employment agency or business records relating to work-seekers.

Schedule 5

Particulars to be included in an employment agency or business records relating to hirers.

Schedule 6

Particulars to be included in an employment agency or business records relating to other employment agencies or businesses.

The details listed in these Schedules are straightforward and do not require further explanation.

EMPLOYMENT – The Employment Relations (1999 Order) (Commencement No. 8) Order (Northern Ireland) 2005

With effect from 24 September 2005 parts of the Employment Relations (Northern Ireland) Order 1999 amended specific sections of the Employment (Miscellaneous Provisions) Order (Northern Ireland) 1981. These included:

the definition of an employment agency was amended to extend coverage to work-seekers who are "persons". The effect was to include work-seekers who are companies;

the restriction on an employment agency or business charging work-seekers a fee has been extended to cover the situation where it “requests” a fee; and

a court may order a person, who is convicted of an offence under the 1981 Order, to pay to the Department a sum which appears to the court not to exceed the costs of the investigation which resulted in the conviction.

SECTION 3 - OTHER LEGAL REQUIREMENTS

Additional legal requirements other than the 1981 Order and the 2005 Conduct Regulations, apply to employment agencies and businesses, either specifically or as they apply to businesses or employers generally.

Gangmasters (Licensing) Act 2004 - This Act establishes the Gangmasters Licensing Authority to set up and operate the licensing scheme for labour providers operating in the agriculture, horticultural, shellfish gathering and associated processing and packaging sectors. The licensing arrangements in the Act will prohibit anyone from acting as a gangmaster in the specified areas, without a licence. It will also make it an offence for a person to enter into an arrangement with an unlicensed gangmaster. The Act applies to gangmasters who provide people to undertake work to which the Act applies anywhere in the UK. This includes businesses registered as employment agencies or businesses. Gangmasters are excluded from 1981 Order by paragraph 2 of Schedule 2 of the Gangmasters (Licensing) Act 2004.

Race Relations (NI) Order 1997 (as amended) - This legislation makes it unlawful for an employment agency to discriminate against a person on the grounds of colour, race, nationality, ethnic or national origins in relation to the provisions of its services. The Equality Commission’s Race Relations Code of Practice for the elimination of racial discrimination and the promotion of equal opportunity in employment includes responsibilities and recommendations for employment agencies and businesses. Copies are available from the Equality Commission, Equality House, 7-9 Shaftsbury Square, Belfast, BT2 7DP (**Tel: 028 9050 0600**). The Code is also available from their website at www.equalityni.org

Immigration and Asylum - The Home Office (**Tel: 0870 000 1585**) is responsible for a range of immigration and asylum legislation which, amongst other things, seeks to prevent illegal working in the United Kingdom. The Home Office website provides a variety of information and guidance to those who may be affected. As well as providing specific guidance on preventing illegal working it has also produced a Code of Practice which deals with the avoidance of racial discrimination in recruitment practices. Some of the more useful guidance, including access to the Code, is available from their website at www.homeoffice.gov.uk/guidance.

Sex Discrimination (NI) Order 1976 (as amended) - The 1976 Order makes it unlawful for an employment agency or business to discriminate against a person on the grounds of sex or marriage in relation to the provisions of its services. The Equality Commission has produced a Code of Practice on equal opportunity policies, procedures and practices in employment, which is available from the Equality Commission, Equality House, 7-9 Shaftsbury Square, Belfast, BT2 7DP (Tel: 028 9050 0600). The Code is also available from their website at www.equalityni.org

The Disability Discrimination Act 1995 (DDA) – This Act makes it unlawful for employers to discriminate against disabled employees or job applicants. Employers may have to make reasonable adjustments to employment arrangements and the workplace. Further details are contained in the booklet entitled 'What employers need to know', which is available from the Equality Commission, Equality House, 7-9 Shaftsbury Square, Belfast, BT2 7DP (Tel: 028 9050 0600). The Code is also available from their website at www.equalityni.org

Employment Rights (NI) Order 1996 - Under this Order it is generally unlawful to refuse access to employment on grounds related to trade union membership. In particular, the 1996 Order makes it unlawful for employment agencies or businesses to refuse to provide their normal service to an applicant because of their trade union membership or non-membership. Guidance booklet ER31, which provides further advice on this issue, can be obtained in electronic form from the Department's website at www.delni.gov.uk.

The Fair Employment and Treatment (NI) Order 1998 (FETO) (as amended) – This Order makes it unlawful to discriminate against someone on the ground of religious belief or political opinion. In particular, Article 22 of FETO specifically addresses the services provided by employment agencies. Employment agencies and businesses should be particularly alert to requirements for employers to maintain fair employment monitoring data for a period of 3 years.

The Employment Equality (Sexual Orientation) Regulations (NI) 2003 – These Regulations make it unlawful to discriminate against an individual on grounds of sexual orientation in employment and training. Further advice can be obtained from the Equality Commission. You can also visit their website at www.equalityni.org.

Rehabilitation of Offenders (NI) Order 1978 (as amended) - This legislation contains provisions concerning the disclosure of criminal records and issues surrounding spent convictions with regard to employment. Guidance booklet ER22, which provides further advice on this issue, can be obtained in electronic form from the Department's website at www.delni.gov.uk.

Gender Recognition Act 2004 – This Act makes it unlawful to discriminate against an individual who has had, or is in the process of having their gender

reassigned under the terms of the Act. The Act also amends the Sex Discrimination (Gender Reassignment) Regulations (Northern Ireland) 1999 – further information can be obtained from the Gender Recognition Panel website at www.grp.gov.uk

Working Time Regulations (NI) 1998 - These Regulations aim to ensure that workers are protected against adverse effects on their health and safety caused by working excessively long hours, having inadequate rest or disrupted work patterns. Guidance booklet 'Working Time Regulations: A Detailed Guide (Revised August 2003) can be obtained in electronic form from the Department's website at www.delni.gov.uk. General enquiries should be directed to the LRA (see overleaf for contact details).

National Minimum Wage Act 1998 – This Act provides that workers, including employment agency and business workers, should receive at least the national minimum wage. The HM Revenue and Customs helpline number is 0845 6500 207. Further details can also be found on the Department of Trade and Industry's website at www.dti.gov.uk/er/nmw.

Civil Partnership Act 2004 – This Act enables same-sex couples to obtain legal recognition of their relationship by forming a civil partnership. It also provides same-sex couples who form a civil partnership with parity of treatment in a wide range of legal matters with those opposite-sex couples who enter into a civil marriage. Further details can be found on the Department of Constitutional Affairs's website at www.dca.gov.uk

Rolled Up Holiday Pay (RHP) – Under the Working Time Regulations workers are entitled to 4.8 weeks' (5.6 weeks' from April 2009) paid holiday each year. It was not uncommon for some employers and employment businesses to increase a worker's hourly rate of pay to include a proportion for holiday pay – a process known as Rolled Up Holiday Pay (RHP). This meant that the employer did not have to pay the worker when the actual holidays were taken. Following a European Court of Justice judgement on 16 March 2006, and more recent judgements in UK courts¹, RHP is now considered unlawful. Employers and employment businesses should allow payment for holiday leave to be given at the same time as the holiday is taken.

¹ Robinson-Steele v PD Retail Services, Clarke v Frank Staddon Ltd, Caulfield & Others v Hanson Clay Products Ltd (formerly Marshalls Clay Products Ltd), 16 March 2006

SECTION 4 - USEFUL CONTACTS

The Labour Relations Agency (LRA) provides impartial advice and information to employers, employees and their representatives about a range of employment matters including legal rights and duties. The LRA's advice and assistance may take the form of supplying information and providing guidance on the detail of the 2005 Conduct Regulations. It may also assist employment agencies and businesses in complying with the requirements of the legislation. The LRA can be contacted at 2-8 Gordon Street, Belfast, BT2 2LG, Tel: 028 9032 1442, Fax: 028 9033 0827, Text-phone: 028 9023 8411, e-mail: info@lra.org.uk, website: www.lra.org.uk

Health & Safety Executive for Northern Ireland (HSENI). HSENI is the lead body responsible for the promotion and enforcement of health and safety at work standards in Northern Ireland. All enquiries relating to the health and safety responsibilities of employment agencies, businesses and hirers should be addressed to the HSENI. The public information line number is 0800 0320 121 and their website address is www.hseni.gov.uk

Equality Commission for Northern Ireland. The Equality Commission for Northern Ireland is an independent public body established under the Northern Ireland Act 1998. The Commission's general duties include working towards the elimination of discrimination, promoting equality of opportunity and encouraging good practice, promoting affirmative/positive action and promoting good relations between people of different racial groups. The Commission also produce guidance on a range of equality issues, including information on employing migrant workers. The Commission can be contacted at Equality House, 7-9 Shaftesbury Square, Belfast, BT2 7DP, Tel: 028 9050 0600, Fax: 028 9024 8687, Text-phone: 028 9050 0589, e-mail: information@equalityni.org, website: www.equalityni.org

National Insurance Numbers. General information on how to obtain and use a National Insurance (NI) number may be obtained on the Department for Social Development's website at www.dsdni.gov.uk or on the Department for Work and Pensions website at www.dwp.gov.uk . For further information on NI numbers in Northern Ireland you can contact one of the following local offices: Lisnagelvin Jobs & Benefits Office, 2 Crescent Rd, Londonderry, BT47 2NJ, Tel: 028 7131 9300, Portadown Jobs & Benefits Office, 140 Jervis Street, Portadown, Co Armagh, BT62 3BZ, Tel: 028 3839 7200 or Shaftesbury Square Jobs & Benefits Office, Conor Building, 107 Great Victoria Street, Belfast, BT2 7AG, Tel: 028 9054 5500.

Statutory Sick Pay. All enquiries should be directed to your local HM Revenue and Customs office. Their website address is www.hmrc.gov.uk

Information Commissioner's Office promotes good information handling practice and enforces data protection and freedom of information legislation. The Data Protection helpline can be contacted at 01625 545 745. For general enquiries contact 028 9051 1270. Their website address is www.informationcommissioner.gov.uk

Invest Northern Ireland is a government funded body which offers practical help and advice for businesses. They have produced a 'No Nonsense Guide' which helps businesses keep up-to-date with regulations that have to be complied with. Their helpline number is 028 9023 9090 and further information about the range of assistance they provide is available on their website at www.investni.com.

Office of the Industrial Tribunals and the Fair Employment Tribunal. These Tribunals are judicial bodies established to resolve disputes between employers and employees in the field of employment rights. Further information about their role, including details on how to make a claim, may be obtained by telephoning 028 9032 7666 or accessing their website at www.employmenttribunalsni.gov.uk.

Trading Standards Service (TSS). The Department has delegated its powers of entry and inspection to TSS, Department of Enterprise, Trade and Investment. Further information can be obtained on their website at www.detini.gov.uk or by contacting them at 176 Newtownbreda Road, Belfast, BT8 6QS, Tel: 028 9025 3900, E-mail: tss@detini.gov.uk.

Further guidance

The Department for Employment and Learning has produced 2 further short guides aimed at employment agencies or businesses and work-seekers. They are available on the Department's website or by contacting:-

Employment Relations Policy and Legislation
Department for Employment and Learning
Adelaide House
39-49 Adelaide Street
BELFAST
BT2 8FD

Tel: 028 9025 7580
Fax: 028 9025 7555
Text-phone: 028 9025 7576
E-mail: employment.rights@delni.gov.uk
Website: www.delni.gov.uk

Upon request, consideration may be given to making the guide available in alternative formats. All requests/comments should be addressed to the Department for Employment and Learning.

people:skills:jobs:



Department for
**Employment
and Learning**
www.delni.gov.uk



INVESTOR IN PEOPLE

THE DEPARTMENT:

Our aim is to promote learning and skills, to prepare people for work and to support the economy.

Further information:

telephone: 028 9025 7580

e-mail: employment.rights@delni.gov.uk

website: www.delni.gov.uk