
DRAFT STATUTORY INSTRUMENTS

2003 No.

**The Conduct of Employment Agencies and
Employment Businesses Regulations 2003**

PART VI

CLIENT ACCOUNTS AND CHARGES TO WORK-SEEKERS

Client accounts

25.—(1) In this regulation—

“client account” means a current or deposit account at a credit institution operated by an agency for holding clients' money in accordance with the provisions of this regulation and Schedule 2;

“credit institution” means a credit institution as defined in article 1(1)(a) of Directive [2000/12/EC](#) of the European Parliament and of the Council relating to the taking up and pursuit of the business of credit institutions⁽¹⁾, that is to say, an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account;

“hirer's deposit” means money held or received by an agency by way of an advance against payment to a work-seeker in respect of work to be done by that work-seeker, where the advance may, in accordance with the terms of any contract between the work-seeker and the hirer, be repayable to the hirer;

an agency receives money on behalf of a work-seeker when the agency or any person connected with it receives money directly or indirectly from a hirer or any person connected with a hirer pursuant to the terms of any contract or arrangement between the work-seeker and the hirer, whether or not the agency has agreed with the work-seeker or the hirer that it will receive such money on the work-seeker's behalf;

references to receiving money on behalf of a work-seeker include the receipt of money by way of an advance against payment to a work-seeker in respect of work to be done by that work-seeker, where the terms of any contract between the work-seeker and the hirer stipulate that the advance is not repayable to the hirer in any circumstances;

references to receiving money on behalf of a work-seeker do not include references to receiving a hirer's deposit.

(2) Save in a case falling within regulation 8(2)(b), an agency shall not request or directly or indirectly receive money on behalf of a work-seeker unless—

- (a) such monies consist of the work-seeker's remuneration from employment in any of the occupations listed in Schedule 3; and
- (b) the agency maintains one or more client accounts in accordance with Schedule 2.

⁽¹⁾ OJNo. L 126, 26.5.2000, p.1; article 1, point 1, first subparagraph as originally adopted was replaced by article 1, paragraph 1 of Directive [2000/28/EC](#) of the European Parliament and of the Council amending Directive [2000/12/EC](#) relating to the taking up and pursuit of the business of credit institutions (OJ No. L 275, 27.10.2000, p.37).

(3) An agency which directly or indirectly receives money on behalf of a work-seeker in contravention of paragraph (2) shall no later than the end of the second business day following the day on which the money is received pay such money or an equivalent sum to—

- (a) the work-seeker on whose behalf it is received;
- (b) an agency which is capable of receiving such money without contravening paragraph (2); or
- (c) the person from whom it was received.

(4) All money received by an agency on behalf of a work-seeker, other than—

- (a) cash paid to the work-seeker no later than the end of the second business day following the day of receipt by the agency or any person connected with it;
- (b) cheques and banker's drafts, made out or as the case may be drawn in favour of the work-seeker; and
- (c) money dealt with in accordance with paragraph (3);

shall be paid into a client account no later than the end of the second business day following the day on which the money is received.

(5) All cheques and banker's drafts referred to in paragraph (4)(b) shall be despatched no later than the end of the second business day following the day on which they are received to the work-seeker in whose favour they are made out or drawn as the case may be.

(6) On each occasion that an agency makes a payment to a work-seeker in accordance with this regulation, the agency shall also give the work-seeker a statement setting out—

- (a) when and from whom the agency received the said payment;
- (b) to what work done by the work-seeker it relates; and
- (c) any fees or other deductions made by the agency.

(7) Subject to paragraph (8), all payments made by an agency to a work-seeker or into a client account shall (except to the extent of any amount required by law to be deducted) be made without deduction.

(8) An agency which is entitled to charge a work-seeker a fee pursuant to regulation 26(1) shall be permitted to deduct a sum equal to its fee payable by the work-seeker from any sum paid to the work-seeker or into a client account provided the work-seeker has in his contract with the agency agreed to such deduction.

(9) An agency which receives money on behalf of a work-seeker which it is required to pay into a client account shall hold it as trustee for that work-seeker, but shall not continue to hold it on any day after the expiry of ten days beginning with the day it is received, or such longer period beginning with that day as the work-seeker has previously requested.

(10) If a work-seeker at any time requests payment to him or, in accordance with paragraph 6(a) (ii) of Schedule 2, to any other person, of some or all of the money held on his behalf, the agency shall no later than the end of the second business day following the day on which the request is made pay the amount requested to the work-seeker or that other person as the case may be.

(11) In the event that an agency holds money on behalf of a work-seeker for a period in excess of thirty days (beginning with the day on which it is received by the agency), it shall no later than the end of the thirty second day give a statement to the work-seeker setting out the amount held on his behalf as at close of business on the thirtieth day and shall continue to give statements at intervals of not more than thirty days thereafter until all sums held by the agency on behalf of the work-seeker have been paid to the work-seeker.

(12) Where money received by an agency on behalf of a work-seeker is in the form of a cheque in favour of the agency, the periods referred to in paragraphs (9) and (11) shall start with the day on which the cheque clears.

(13) All invoices issued by an agency in respect of work done by a work-seeker must state that where payment is to be made by cheque or banker's draft, the said cheque or banker's draft must be made out, or as the case may be, drawn in favour of the agency's client account.

(14) Subject to paragraph (15), any hirer's deposit received by an agency shall be paid into a client account, without deduction (except to the extent of any amount required by law to be deducted), no later than the end of the second business day following the day on which the money is received.

(15) An agency shall not request or directly or indirectly receive a hirer's deposit, unless that deposit, if it became payable to the work-seeker, would be money which the agency would be entitled to request or directly or indirectly receive on behalf of the work-seeker under paragraph (2).

(16) Where an agency improperly receives a hirer's deposit, it shall, no later than the end of the second business day following the day on which the money is received, pay that deposit or an equivalent sum to -

- (a) an agency which is capable of receiving such deposit; or
- (b) the person from whom it was received.

(17) Any hirer's deposit received by an agency shall be held by the agency as trustee for the hirer until such time as the money becomes payable to the work-seeker or the hirer in accordance with the terms of any contract between the work-seeker and the hirer.

(18) Where a work-seeker becomes entitled, under the terms of any contract with a hirer, to any money paid to an agency by way of a hirer's deposit, that money shall be treated as money received by the agency on behalf of that work-seeker for the purposes of paragraphs (4), and (6) to (12) (and, in the case of paragraph (9), as such money which it is required to pay into a client account), and the agency shall be treated as having received the money on behalf of the work-seeker on the day on which the work-seeker became entitled to it.

Circumstances in which fees may be charged to work-seekers

26.—(1) Subject to paragraphs (3) and (4), the restriction on charging fees to work-seekers contained in section 6(1)(a) of the Act⁽²⁾ shall not apply in respect of a fee charged by an agency for the service provided by it of finding or seeking to find a work-seeker employment in any of the occupations listed in Schedule 3.

(2) Where paragraph (1) applies, subject to paragraph (5), any fee charged by the agency may consist only of a charge or commission payable out of the work-seeker's earnings in any such employment which the agency has found for him.

(3) Paragraphs (1) and (7) shall not apply where the agency, or any person connected with it, charges a fee to the hirer in respect of the service of supplying or introducing that work-seeker to him.

(4) In any case in which the agency is connected with the hirer, paragraphs (1) and (7) only apply if, prior to the provision of the service in respect of which the fee is to be charged, the agency informs the work-seeker of the fact that it is connected with the hirer.

(5) Paragraph (2) shall not apply to any fee charged to a work-seeker by an agency in respect of the inclusion of information about the work-seeker in a publication provided that—

- (a) the publication is wholly for one or both of the following purposes, namely the purpose of finding work-seekers employment in, or providing hirers with information about work-seekers in relation to, any of the occupations listed in Schedule 3; and

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

- (b) either—
 - (i) the only work-finding service provided by the agency or any person connected with it to the work-seeker is the service described in this paragraph; or
 - (ii) the fee charged to the work-seeker amounts to no more than a reasonable estimate of the cost of production and circulation of the publication attributable to the inclusion of information about that work-seeker in the publication; and
 - (c) in addition to the requirements in regulations 13, 14 and 16, in so far as they are applicable, the agency has, before it entered into the contract with the work-seeker by reference to which the fee is to be charged, made available to him a copy of a current edition of the publication (or, where the publication exists only in electronic form, given him access to a current edition of the publication) in which it is offering to include information about him.
- (6) The restrictions on charging fees to work-seekers contained in section 6(1)(a) of the Act shall not apply to any fee consisting of a charge to a work-seeker in respect of the purchase of or subscription for a publication containing information about employers provided that —
- (a) this is the only work-finding service provided by the agency or any person connected with it to the work-seeker; and
 - (b) the agency has made available to the work-seeker a copy of a current edition of the publication (or, where the publication exists only in electronic form, given him access to a current edition of the publication) in advance of the work-seeker purchasing or subscribing for it.
- (7) The restriction on charging fees to work-seekers contained in section 6(1)(a) of the Act shall not apply in respect of a fee charged by an agency for the service provided by it of finding or seeking to find a work-seeker employment where—
- (a) the work-seeker in question is a company; and
 - (b) the employment is in an occupation other than any of those occupations listed in Schedule 3.