

SCHEDULE 2

Regulation 25

CLIENT ACCOUNTS

Interpretation

1. In this Schedule unless the context otherwise requires—

the expressions “accounts”, “books”, “ledgers” and “records” shall include loose-leaf books and such cards or other permanent documents or records as are necessary for the operation of any system of book-keeping, electronic, mechanical or otherwise and where an electronic system is operated, the information recorded on it must be capable of being reproduced in legible form;

“accounting reference date” has the same meaning as it is given in section 224 of the Companies Act 1985(1);

“client” means any person for whom an agency acts and on whose account it holds, receives or pays out client’s money or a hirer from whom an agency receives a hirer’s deposit;

“client account” has the same meaning as in regulation 25;

“client’s money” means—

- (a) money held or received by an agency on behalf of a work-seeker (including money held or received by way of advance against payment to a work-seeker for work to be done by that work-seeker, where the terms of the contract between the work-seeker and the hirer stipulate that the advance is not repayable to the hirer in any circumstances); and
- (b) hirer’s deposits;

but shall not include money to which the only person entitled is the agency itself;

“credit institution” has the same meaning as in regulation 25;

“hirer’s deposit” has the same meaning as in regulation 25.

Maintenance of client accounts

2.—(1) An agency may keep one client account or as many such accounts as it thinks fit.

(2) Every client account must be in the name of the agency, and the name of the account must include—

- (a) the word “client”; and
- (b) if the account contains money belonging to a single client, the name of that client.

3. An agency may pay into a client account—

- (a) such money belonging to the agency as may be necessary for the purpose of opening or maintaining the account;
- (b) money to replace any sum which for any reason may have been drawn from the account in contravention of paragraph 7(2); and
- (c) money received by the agency which under paragraph 4(b) the agency is entitled to split but which the agency does not split.

4. An agency which holds or receives money which includes client’s money—

(1) 1985 c. 6; section 224 was inserted by the Companies Act 1989 (c. 40), section 3 and amended by the Companies Act 1985 (Miscellaneous Accounting Amendments) Regulations 1996 (S.I.1996/189), regulation 2(2), (3), (4) and the Companies Act 1989 (Commencement No. 4 and Transitional and Saving Provisions) Order 1990 (S.I. 1990/355), article 15.

- (a) may where practicable split such money and, if it does so, shall deal with each part thereof as if it had received a separate sum of money in respect of that part; or
- (b) shall, if it does not split the money, pay it into a client account no later than the end of the second business day following the day on which it receives the money.

5. An agency shall not pay into a client account any money other than money it is required or permitted by regulation 25(4) and 25(14) or this Schedule to pay into a client account, and an agency into whose client account any money has been paid in contravention of this paragraph shall, no later than the end of the second business day following the day on which it discovers the same, withdraw it and pay it to the person to whom it belongs.

6. An agency may withdraw from a client account—

- (a) client's money properly required for—
 - (i) a payment to the client;
 - (ii) a payment to another person on the written request of the client provided that the agency has previously agreed with the client to make payment to that other person if the client so requests;
- (b) client's money properly required—
 - (i) for or towards reimbursement of money properly expended by the agency on behalf and at the written request of the client;
 - (ii) for or towards payment of the agency's fees due from the client;
 - (iii) for or towards reimbursement of monies paid by the agency to the client representing the client's remuneration from employment with a hirer, where the agency has paid such remuneration to the client prior to receiving the same from the hirer (or any person connected to the hirer);

where the client has agreed to such deduction in paper form or by electronic means and, in a case falling within sub-paragraph (b)(i) or (ii) the agency has delivered to the client an invoice or other written statement of the amount of the fee incurred or money expended;

- (c) money (not being client's money) to which paragraph 3(a) or 4(b) applies, to reimburse the person properly entitled to it;
- (d) money which for any reason may have been paid into the account in contravention of paragraph 5, to rectify that contravention;
- (e) client's money required by law to be deducted from a work-seeker's remuneration before such remuneration is paid to him;

provided that in any case under sub-paragraph (a) or (b) of this paragraph the money so drawn shall not exceed the total of the money held for the time being in such account on account of such client.

7.—(1) No money drawn from a client account under paragraph 6(b), (c) or (d) shall be drawn except by—

- (a) a cheque or electronic transfer drawn in favour of the agency; or
- (b) a transfer to an account at a credit institution in the name of the agency not being a client account.

(2) No money other than money permitted by paragraph 6 to be drawn from a client account shall be so drawn.

(3) A withdrawal from a client account may only be made by a person who is an authorised signatory in accordance with the current mandate held by the credit institution holding the account.

8. No sum shall be transferred from the ledger account of one client to that of another except—

- (a) with the consent of the client to whom the sum belongs; or
- (b) where a work-seeker becomes entitled, under the terms of any contract with a hirer, to receive any money paid to an agency by way of hirer's deposit.

Accounts and records

9.—(1) Every agency shall at all times keep properly written up such accounts as may be necessary—

- (a) to show the agency's dealings with—
 - (i) clients' money received, held or paid by it; and
 - (ii) any other money dealt with by it through a client account;
- (b)
 - (i) to show separately in respect of each client all money of the categories specified in paragraph (a) which is received, held or paid by it on account of that client; and
 - (ii) to distinguish all money of the said categories received, held or paid by it, from any other money received, held or paid by it; and
- (c) to show the current balance of each client's account in the client's ledger or to enable this to be readily ascertained.

(a) (2) (a) All dealings referred to in sub-paragraph (1)(a) of this paragraph shall be appropriately recorded—

- (i) in a clients' cash account or a clients' column of a cash account; and
- (ii) in a clients' ledger or a clients' column of a ledger;

and no other dealings shall be recorded in such account, ledger, or, as the case may be, in such columns.

(b) All dealings of the agency relating to its business as an agency other than those referred to in sub-paragraph (1) (a) of this paragraph shall be recorded in a separate cash account and ledger or such other columns of a cash account and ledger as the agency may maintain.

(3) In addition to the accounts, ledgers and records referred to in sub-paragraph (2) of this paragraph, every agency shall keep a record of and copies of all invoices and of all statements under paragraph 6(b) (distinguishing between fees and disbursements) delivered or made by the agency to its clients.

(4) Every agency shall, within 21 days of the end of each calendar month—

- (i) compare, as at the last day of the calendar month that has just ended, the total of the balances shown by the clients' ledger accounts of the liabilities to the clients, with the cash account balance;
- (ii) prepare a reconciliation statement showing the cause of the difference, if any, shown by the above comparison;
- (iii) reconcile the cash account balances with the balance shown on statements and passbooks of all client accounts, and money held elsewhere, showing the causes of any differences in the reconciliation; and
- (iv) take appropriate action to rectify any differences.

Inspection and report

10.—(1) Every agency who at any time during an accounting period is required to keep accounts and records under paragraph 9 above shall, within ten months of the end of the accounting period,

have them inspected and reported upon by an independent person who is a member of any of the bodies listed in section 249D(3) of the Companies Act 1985(2).

(2) The agency must ensure that the reporting accountant's rights and duties are set out in a letter of engagement incorporating the following terms and must honour the undertakings given in paragraphs (v) and (vi) of the letter—

- “(i) In accordance with paragraph 10 of Schedule 2 to the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (“the Conduct Regulations”), you are instructed to report to me/this firm/this company whether in your opinion the requirements of regulation 25 of and Schedule 2 to the Conduct Regulations have been complied with or have been substantially complied with during the accounting period to which the report relates.
- (ii) You may report that those requirements have been substantially complied with if in your opinion they have been complied with except so far as concerns trivial breaches due to clerical errors or mistakes in book-keeping, all of which were rectified on discovery, and none of which in your opinion resulted in any loss to a person entitled to client's money.
- (iii) If you report that in your opinion those requirements have not been complied with or substantially complied with, you must annex to your report a statement of the matters in respect of which, in your opinion, the requirements have not been complied with or substantially complied with.
- (iv) If you are unable to form an opinion as to whether or not the requirements have been complied with or substantially complied with, you must specify in your report the matters in respect of which you have been unable to satisfy yourself, and the reasons you have been unable to do so.
- (v) For the purpose of making your report under paragraph (i) above, I/we/this firm/the company undertake to provide you with particulars of all accounts maintained or operated at any credit institution by me/this firm/the company, in the course of my/our/its business as an employment agency during the period to which the report relates.
- (vi) Subject to paragraph (vii) below, you must examine my/this firm's/this company's accounts and records in order to enable you to verify whether they comply with the requirements of paragraph 9 of Schedule 2 to the Conduct Regulations, for which purpose you may request such further information and explanations as you may consider necessary, and I/we/the company undertake(s) to provide you with such information as you may request.
- (vii) nothing in paragraph (vi) above shall require you—
 - (a) to extend your enquiries beyond the information contained in the documents produced to you, supplemented by such information and explanations as you may obtain from me/us/the company;
 - (b) to consider whether the accounts and records have been properly kept in accordance with paragraph 9 of Schedule 2 to the Conduct Regulations at any time other than during the period to which your report relates.”.

(3) An agency required to maintain a client account in accordance with regulation 25 and this Schedule shall keep displayed at each of its premises used for or in connection with the carrying on of an employment agency in such a position that it can be readily seen by persons resorting to those premises a copy (certified as a true copy by the reporting accountant) of the reporting accountant's most recent report, but not any statement annexed to it in accordance with paragraph (2)(iii) above.

(2) 1985 c. 6; section 249D was inserted by the Companies Act 1985 (Audit Exemption) Regulations 1994 (S.I. 1994/1935), regulation 2 and amended by the Companies Act 1985 (Audit Exemption) (Amendment) Regulations 1995 (S.I. 1995/589), regulation 2, the Companies Act 1985 (Audit Exemption) (Amendment) Regulations 1996 (S.I. 1996/3080), regulation 2 and the Companies Act 1985 (Audit Exemption) (Amendment) Regulations 1997 (S.I. 1997/936), regulation 4.

Accounting period

11.—(1) The accounting period shall, for the purpose of paragraph 10 of this Schedule and regulation 25, be determined in accordance with the following provisions of this paragraph.

(2) The first accounting period of an agency shall be—

- (a) in the case of an agency which has a client account or accounts established before the date on which these Regulations come into force, the period beginning with the day immediately following that date, and ending on a date not more than twelve months after that date or if the agency is incorporated under the Companies Act 1985, the agency's accounting reference date whichever is the sooner;
- (b) in the case of an agency which establishes a client account or accounts on or after the date on which these Regulations come into force, the period beginning with the date upon which the first such client account is established and ending with a date not more than twelve months from that date or if the agency is incorporated under the Companies Act 1985, the agency's accounting reference date whichever is the sooner.

(3) Subject to sub-paragraph (4), subsequent accounting periods shall begin with the day immediately following the end of the agency's previous accounting period and end with a date not less than six months and not more than twelve months after that date.

(4) In the event that the only client account maintained by an agency is closed on a date less than six months following the end of the agency's previous accounting period, the accounting period in question shall end on the date upon which such client account is closed.

Preservation of client account records

12.—(1) Every agency required to maintain a client account or client accounts in accordance with regulation 25 and this Schedule shall preserve—

- (a) all accounts, books, ledgers and records for at least six years from the date of the last entry therein;
- (b) copies of all invoices and statements under paragraph 6(b) above as issued to clients, for at least six years from the date of such issue;
- (c) all statements as printed and issued by the credit institution with which the relevant client account is held, for at least six years from the date of receipt of each statement by the agency;
- (d) the records of all reconciliations required by paragraph 9 above, in each case for at least six years from the date upon which such reconciliation is produced;
- (e) all reports made to it by an accountant under paragraph 10 above, in each case for at least six years from the date upon which such report is delivered to the agency.

(2) The records referred to in this paragraph may be kept either at the agency's relevant business premises or elsewhere, provided that if they are kept elsewhere, the agency shall ensure that they are readily accessible by it and that it is reasonably practicable for any person employed by the agency at any of its relevant business premises to arrange for them to be delivered to the relevant business premises at which that person is employed.

(3) The records referred to in this paragraph may be kept in electronic form, provided that the information so recorded is capable of being reproduced in legible form.

(4) If no hard copy is kept of any information contained in a record kept in an electronic system, that information must be capable on reasonable notice of being reproduced in printed form.

Interest

13. Where an agency holds money relating to a single client in a client account, the agency must account to the client for any interest earned on any sum that is held on behalf of the client for more than 10 days.