

Guide for bookers of entertainment

This was issued by one of the trade associations to help bookers and agents understand the regulations.

Under the Conduct Of Employment Agencies & Employment Business Regulations 2003 Act, which became law on April 6th 2004, anyone!!! (even party organisers & direct bookers) who introduces an artiste (work seeker) to a venue (hirer) is considered under law to be an agent, even if no commission is charged, and are legally obliged to ensure that their terms of business are in place with every artiste (work seeker), venue (hirer), promoter (hirer) and agent that they do business with before a booking is made.

These regulations can be viewed on the following link:

<http://www.opsi.gov.uk/si/si2003/20033319.htm>

As a general rule, guidelines have been issued in the form of a '**Must**' and '**Must Not**' list of things to do and things not to do.

A rough guide to legislation

Contracts

A contract must be issued to **EVERY** artiste, **EVERY** agent, and **EVERY** venue for **EVERY** booking.

EVERY contract **MUST** state the names of all parties to the contract.

EVERY contract **MUST** state whether the agent is acting as an **EMPLOYMENT AGENCY** (commission bookings), or an **EMPLOYMENT BUSINESS** (Nett bookings).

Terms Of Business

Terms Of Business must be in place between **EVERY** artiste, venue (hirer), and agent that you deal with before you can negotiate work.

THIS MUST BE PROVED BEFORE YOU CAN EVEN MAKE A BOOKING.

Records to be kept

Artistes

- 1 Date application received -
- 2 Work seekers name & address & date of birth if under 22
- 3 Any terms which apply or will apply etc
- 4 Details of work seeker's training, experience, qualifications and any authorisation to undertake particular work
- 5 Details of any requirements specified by the work seeker etc
- 6 Names of hirers to whom work seeker is introduced or supplied
- 7 Details of resulting engagement & date from which it takes effect
- 8 Copy of any contract between work seeker & hirer
- 9 Date application withdrawn or contract terminated
- 10 Fees charged to work seekers
- 11 Details of enquiries made about work-seekers

Hirers

- 1 Date application received
- 2 Name and address, and location of employment if different

- 3 Details of the position(s) the hirer seeks to fill
- 4 Duration or likely duration of work
- 5 Experience, training etc... required by the hirer re: positions the hirer seeks to fill
- 6 Terms offered in respect of condition(s) the hirer seeks to fill
- 7 Copy of the terms between the agency or employment business & hirer
- 8 Names of work seekers introduced or supplied
- 9 Details of enquiries about the hirer and the position the hirer seeks to fill
- 10 Details of each resulting engagement & date from which it takes effect
- 11 Details of requests for fees or other payment from the hirer
- 12 Enquiries made about hirers
- 13 Offer withdrawn

Agents

- 1 Agent name & address
- 2 Any terms which apply or will apply etc
- 3 Details of resulting engagement & date from which it takes effect
- 4 Copy of any contract between work seeker & hirer
- 5 Details of enquiries made about agents

Questions

What are the penalties for agents that do not comply?

Up to a £5000 fine with a criminal offence for every breach (every contract that is wrong – 10 contracts per day could mean up to £50,000 fine per day), together with a 10 year ban from operating an Entertainment Agency / Business.

We include a '**Must**' and '**Must not**' guide for your reference.

The **MUST** list

Terms of Business

You **MUST**:

Ensure that copies of your Terms of Business have been provided to all parties before you as an Employment Agent or Employment Business can negotiate with a Work seeker, Hirer, Employment Business or other Agent.

Ensure that the Terms of Business contain:

- a) Type of worker and qualifications that is sought
- b) Payment method, terms and the means of calculation of any fee payable
- c) How you and any other Agent will operate (as either an Employment Agent or Employment Business)
- d) Information relating to gifts or inducements
- e) Cancellation Conditions
- f) Refunds and Rebates

Issue a written confirmation of any agreed changes to the Terms of Business

Issue your terms of business within a single document if at all possible.

Applications

You **MUST**:

Upon receipt of an application from a work seeker record the details laid down in Schedule 4 (details of the work seeker) including whether or not he falls into a category in Schedule 3 and Regulation 26 (i.e. you are entitled to take a commission).

Obtain confirmation of the work seeker's identity, his/her experience, training, qualifications and any authorisation the hirer considers necessary or which is required by law or by any professional body to be employed in the position the hirer seeks to fill, and that the work seeker is willing to work in the position the hirer wishes to fill, before introducing a work seeker.

Upon receipt of an application from a hirer record the details contained in Schedule 5.

Take all reasonable steps to ensure that the Hirer is a responsible person and that the Work seeker is suitable for the job.

Sub Agents

You **MUST**:

Ensure that if the hirer is a sub agent you not only take those details in schedule 5 but if you are splitting the commission you must know the reliability of that agent. You must investigate his suitability and keep a record of those investigations including the dates and times they were made and the result of those investigations as listed in Schedule 6.

Ensure that all agreements / terms of business between you and any sub agent are in writing.

Inform the hirer if you receive or obtain information, which indicates that the work seeker is unsuitable for the position in which the work seeker has been employed, without delay. "Without delay" in this regulation means on the same day or where it is not reasonably practicable, on the next business day.

Agree how and when payment is to be made, i.e. to the Work seeker, a Sub Agent, or yourself.

Ensure that if a Sub Agent is to receive the money, the terms of agreement state that he will pass it on to you or to the work seeker or his authorised representative.

Administration & Documentation

You **MUST**:

Issue contracts / confirmations to **ALL PARTIES** in writing as soon as reasonably practicable, and issue at the latest within 5 business days.

Issue such contracts / confirmations even if you will be issuing them after the event has taken place i.e. retrospectively

Keep all records relating to an engagement for 1 calendar year from the date of the engagement, to include Booking Enquiry forms, letters, riders, complaints and alterations to those enquiries etc. These **MUST** be produced within 2 working days if

required.

State whether you are operating as an "Employment Business" or an "Employment Agency" for the purposes of each individual booking on all relevant paperwork.

Retain all financial records including contracts, commission notes and invoices for at least 6 years (plus the current year). This must include Bank Statements, Work seekers' Ledgers, Work seekers' Statements, Reconciliation's, etc.

Ensure that all advertisements contain the full name of the Employment Agency or Employment Business and state how the agent is acting, i.e. an Employment Agency, Employment Business etc.

Ensure that all job advertisements are for genuine jobs that must exist at the time of placing the advertisement

State full details of engagement and include rates of pay, length of engagement, qualifications required when advertising for specific engagements.

Have the hirer's permission to advertise any specific engagements.

Clients Accounts

Note: There is now no requirement to operate a Clients Account if you are not operating under Regulation 26 and Schedule 3 as long as you **DO NOT** receive money belonging to third parties.

You **MUST**:

Have a client account and conform to Regulation 25 and schedule 2 if you ever receive money on behalf of a work seeker, client or other agent.

Use the word "Client" in the name of the account if using a client accounts in accordance with Regulation 25.

Ensure that if the account is a single account solely for the use of one work seeker or act it also contains the name of the person or act to which it relates.

Pay any work seekers money you receive into a properly formed Clients Account by the end of the second business day after receipt.

Send any cheque you receive payable to a work seeker to him within 2 business days of receipt.

Send a statement when you pay a work seeker from your Clients Account, to include from when and where it came, the date you received it, and details of any deductions you have made,.

Ensure that payment of work seekers money for engagements is made to the work seeker within 10 days of receipt or of becoming due whichever is the later. (You are not deemed to have received the payment until it has cleared).

If the account is solely for one work seeker use you **MUST** pay it out to any other person if requested by the work seeker, such request to be in writing (the work seeker cannot give you a list of payees only one). This **MUST** also be paid out within the 10-day period.

Ensure that if you hold money belonging to a work seeker longer than 30 days, you send a statement to the work seeker showing the balance due by no later than the 32nd day, AND, thereafter, send a further statement every successive thirty days.

Ensure that all Debit Notes you issue request payment to your Clients Account.

Understand that all deposits to an Agent belong to the hirer, NOT the Agent, until the performance date or other agreed date when they must be dispersed as set out in the original agreement.

Understand that the Agent is only entitled to the interest accruing on the deposit and that part of the money, which is deemed as commission. The agent may also keep in the account sufficient monies to maintain the account.

Ensure that no money from Invoices (as opposed to Debit Notes) is deposited into your Clients Accounts. All such monies MUST be deposited in an Agent's Business account.

Ensure that any deposits held against "unenforceable" contracts are returned to the hirer and be dealt with as if the contracts are frustrated.

Ensure that whilst operating under Regulation 25 and Schedule 2 of the 2003 Regulations money in your Clients Account only belongs to Hirers and third parties, money awaiting dispersal to Agents and Work seekers and such a sum as to allow the account to be maintained.

Ensure that any monies wrongly received are paid back to the hirer or another person or Agent legally entitled to receive it within 2 days of receipt.

Ensure that any money placed into an incorrect account in error or by accident is moved to the correct account or paid back to the hirer or another person or Agent legally entitled to receive it within 2 days of that error being discovered.

Ensure that your Client account records have separate ledgers, which readily show the balance due to each work seeker.

Balance any and all Client's Accounts on a monthly basis AND produce a reconciliation statement, which must be retained.

Account to the work seeker for any interest accruing if you hold a work seeker's money for more than 10 days in a single Client's Account used solely for the use of that one work seeker.

Have any Client Accounts operated within the meaning of Regulation 25 and Schedule 2 audited annually within TEN MONTHS of the end of the financial year by a finance professional qualified to audit for Companies House and as specified in section 249(d)(3) of the Companies Act.

Give the Auditor his instructions in the form of a copy of Schedule 2 Paragraph 10 in its entirety.

Display the resulting Audit certificate in your main premises or the premises to which visitors come for work seeking reasons, for one year.

The **MUST NOT** list

You **MUST NOT**:

Request or directly or indirectly receive monies belonging to any third party (e.g. Artiste fees on commission deals, no pick ups) or that may at some point be refundable (e.g. deposits) unless you have an appropriately constructed Clients Account in place to hold the monies and have organised Auditing of the account and the additional administration duties required under the Regulations.

Operate as an Employment Agent and an Employment Business in the same deal

Make any offer of work conditional upon using the any other services from the agency or business or person or group of persons or any subsidiary company "connected" with it. E.g. the provision of Photos, CV's, and Travel services including Travel Agency and Car Hire etc., Security Services or other non work seeking services.

Charge commission to any work seeker whose occupation is not listed in Schedule 3 except where the work seeker in question is a company.

Introduce or supply a work seeker to a hirer to perform

- (a) The duties normally performed by a worker who is taking part in a strike or other industrial action ("the first worker"), or
- (b) The duties normally performed by any other worker employed by the hirer and who is assigned by the hirer to perform the duties normally performed by the first worker, unless in either case the Employment business does not know, and has no reasonable grounds for knowing, that the first worker is taking part in a strike or other industrial action.

When acting as an employment business withhold or threaten to withhold from the work seeker (whether by means of the inclusion of a term in a contract with the work seeker or otherwise) the whole or any part of any payment in respect of any work done by the work seeker on any of the following grounds

THE **MUST NOT** list (continued)

(a) Non receipt of payment from the hirer in respect of the supply of any service provided by the employment business to the hirer;

(b) The work seeker's failure to produce documentary evidence authenticated by the hirer of the fact that the work seeker has worked during a particular period of time, provided that this provision shall not prevent the employment business from satisfying itself by other means that the work seeker worked for the particular period in question;

(c) The work seeker not having worked during any period other than that to which the payment relates; or

(d) Any matter within the control of the employment business.

Disclose information relating to a work seeker, without the prior consent of that work seeker, except

(a) For the purpose of providing work finding services to 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, to the professional body of which he is a member.

When operating as an Employment Agency disclose information relating to a work seeker to any current employer of that work seeker without that work seeker's prior consent, which has not by the time of such disclosure been withdrawn.

Make the provision of any services to that work seeker conditional upon such consent being given or not withdrawn.

Charge "Up front" fees (this is not a deposit or system of credits but a registration fee, signing on or enrolment fee or supply of information fee) except for charging for advertising in a publication for work seeking purposes. Such charges are subject to conditions reflected in the regulations.

Draw your own money (for example commissions due) a client account 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.

Change your Terms of Business relating to any particular transaction without the agreement of those affected by such change.