



# Conduct of Employment Agencies and Employment Businesses Regulations

Candidate guide to The Conduct Regs

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This Candidate briefing has been compiled by the Recruitment & Employment Confederation (REC), the representative body for the UK's recruitment industry of which Sitec Professional Services Ltd is a long standing Corporate Member.

## **Background**

The Conduct Regulations and the Employment Agencies Act 1973 are the main statutory rules governing the conduct of employment agencies and employment businesses operating in England, Scotland and Wales. For those who operate in Northern Ireland, the Conduct of Employment Agencies and Employment Businesses (Northern Ireland) Regulations 2005 apply.

The Regulations were introduced to raise standards within the recruitment industry and stipulate how recruitment businesses should operate, providing added protection for job seekers and companies using the services of recruiters.

## **Do the Regulations apply to me?**

The "Conduct of Employment Agencies and Business Regulations" are a set of laws designed to protect work seekers and are applicable to all workers regardless of their engagement status. The definition of "work seeker" in the Regulations includes individuals who supply their services through limited companies, umbrella companies as well as personal service companies.

However, Limited Company Contractors (LCCs) are permitted to opt out of the scope of the Regulations if they give appropriate notice to an employment business and providing they are not working with anyone under the age of 18 or with vulnerable adults. This means that where there has been a valid opt-out, the Conduct Regulations will not apply to the supply of that person's services. The decision whether or not to opt out belongs to the LCC and it is illegal for an employment business to make opting out of the Regulations a pre-condition of finding or offering them work.

## **What the Regulations mean to me?**

The employment business managing the supply to the client will have various obligations towards the worker and the client. These obligations include (but are not limited to):

- The employment business must confirm on what basis they are to offer work finding services, the type of work they are looking for and the terms which apply between the employment business and the worker.
- Under Regulation 21, the employment business must pass certain information to a worker before the start of an assignment including:
  - the identity of the hirer and the nature of their business;
  - the assignment start date;
  - the duration, or likely duration, of the assignment;
  - type of work,
  - location and hours of work;
  - any risks to health and safety as well as any steps the client has taken to prevent or control such risks,
  - the experience, training, qualifications and any authorisations that the client considers are necessary to perform the role;
  - any expenses applicable, and
  - the actual rate of remuneration to be paid.

- If a worker carries out work on an assignment, but is unable to obtain a signed timesheet, the employment business is still obliged to pay for the hours worked. However please note that the employment business is permitted to delay payment for a reasonable period to check whether the worker has worked the hours claimed.
- As a 'work-seeker' within the definition specified in the Conduct Regulations, they must not be subjected to a detriment or penalty as a result of the worker or the employment business terminating an assignment, for example an employment business may not insert a clause in the contract seeking to prevent a worker from taking up employment directly with the client.

### ***Opting-out of the Conduct Regulations***

Under Regulation 32, LCCs are entitled to opt out of the Conduct Regulations provided they are not working with anyone under the age of 18 or with vulnerable adults. Where there has been a valid opt-out, the provisions of the Conduct Regulations will not apply. Furthermore, under Regulation 32(13), an employment business cannot make the provision of work finding services conditional upon an LCC opting out of the Conduct Regulations.

#### ***How do I opt out?***

The default position is that the Conduct Regulations will apply unless the LCC gives notice of their desire to opt out. Therefore, in order for there to be valid opt-out, notice signed by both the LCC and a representative of the limited company must be given to the employment business.

The Conduct Regulations clearly state that this notice must be in writing. In the event of a dispute, where an employment business cannot demonstrate that a valid opt out is in place, the Conduct Regulations will be deemed to apply. Where an LCC is supplied by a corporate member of the REC, the employment business will have an appropriate opt-out form for the LCC and the limited company to sign as well as appropriate terms of business.

The opt-out notice must be in place before the start of any assignment and the employment business must notify the client of the opt-out arrangement before it introduces or supplies the LCC to the client. Where an LCC has previously given notice to the employment business of their intention to opt out of the Conduct Regulations, further notice should be given to the employment business where the LCC wishes to withdraw their decision to opt out. However, where the LCC is working in an assignment with a client, their notice to withdraw the opt-out will not take effect until after the LCC stops working in that assignment with the client.

### ***Genuinely Self-Employed***

LCCs typically choose to opt out because they wish to demonstrate that they are genuinely self-employed. An individual's self-employment status is determined by whether they are inside or outside of the IR35 tax legislation, opting out of the Conduct Regulations will therefore have little impact on whether an individual is genuinely self-employed under IR35. There are a number of factors which are assessed in order to determine whether an LCC is genuinely self-employed. These factors include an assessment of:

- the contractual relationship between parties;
- the level of control a client maintains over the LCC during the assignment;
- whether there is any financial risk taken by the LCC in providing its services (for example whether the LCC pays for their own professional indemnity insurance);
- whether there is a right of substitution in the contract that can actually be invoked; and
- whether the LCC provides their own tools or uses tools provided by the client,

Ultimately whether an LCC decides to opt out of the Conduct Regulations is entirely a decision for them to make, LCCs may wish to get their own tax and legal advice before making this decision.

### ***Charging LCCs for finding work***

The Conduct Regulations permit employment agencies, in certain circumstances, to charge LCCs a fee for introducing them to potential contacts and clients where the LCC will be engaged by the client directly. This is an exception to the general rule that recruiters may not charge fees to work seekers for providing work finding services.