



Department for
Business, Energy
& Industrial Strategy

Employment agencies: handling payment in the entertainment, sport and modelling sectors

Consultation

Closing date: 20th April 2022

February 2022



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Any enquiries regarding this publication should be sent to us at: agencyworkersconsultation@beis.gov.uk

Introduction

The Employment Agencies Act 1973 and the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (the regulations) regulate the relationships between employment agencies (who supply staff to permanent positions) and employment businesses (who employ staff and supply them to work for third parties) and workers. Pay is one of the areas that the employment agency legislation covers. Under this legislation, workers cannot generally be charged a fee for being found work though there are exceptions. There are also restrictions on who is permitted to handle workers' pay

Employment businesses are permitted to pay workers, while in most circumstances employment agencies are not. However, agencies in the entertainment, sport and modelling sectors are treated differently. They are permitted to pay workers on behalf of hirers and are permitted to charge fees or commission to work-seekers for work-finding services provided they comply with certain restrictions.

There is now a widespread practice in the entertainment, sport and modelling sectors, which involves agencies in these sectors charging the hirer an enhanced fee whilst continuing to handle the remuneration for workers (models, actors, performers). This is known as the 'agency supplement'.

We need to address a gap that has arisen between business practice and the regulations. We want to ensure we have a regulatory framework that is fit for purpose and strikes a balance between providing flexibility for business in how it operates whilst ensuring protection for workers.

We are considering several options, ranging from one that would require agencies in these sectors to change their practices (by no longer charging hirers and paying workers), to one that would involve legislative changes and would not require businesses to change their practices regarding the agency supplement.

The option Government chooses to pursue will impact hirers, agencies and those seeking work in the relevant sectors. We are therefore using this consultation to build evidence and understand the impact of our proposals on hirers, agencies and individuals seeking work in these sectors before taking action.

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General information

Why we are consulting

Recruitment in the entertainment, sport and modelling sectors, like the wider recruitment sector, is regulated by the Employment Agencies Act 1973 and the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (the Conduct Regulations). Generally, employment agencies are prohibited by regulation 8 of the Conduct Regulations from paying or arranging for the payment of work-seekers. However, regulation 8 also contains an exemption allowing employment agencies in specific sectors (entertainment, sport, and modelling), which are permitted by regulation 26 and Schedule 3 to charge fees to work-seekers, also to handle their pay. Agencies using these exemptions to charge fees and pay work-seekers must meet certain conditions.

The Government wants to ensure that the rules regulating handling of payment and charging of work-finding fees in the entertainment, sport and modelling industries are fit for purpose and do not unnecessarily burden businesses. We are using this consultation to seek views on the best way to respond, and whether that involves maintaining the current legal position or amending the legislation. We want to understand the likely impacts of either option on the entertainment, sport and modelling sectors.

Consultation details

Issued: Wednesday 9th February 2022

Respond by: Wednesday 20th April 2022

Enquiries to:

Labour Market Directorate
Department for Business, Energy and Industrial Strategy
4th Floor, Victoria 1
1 Victoria Street
London
SW1H 0ET

Email: agencyworkersconsultation@beis.gov.uk

Consultation reference: Handling payment in the entertainment, sport and modelling sectors

Audiences:

We welcome the views of interested parties. We anticipate that work-seekers in the entertainment and modelling sectors, and employment agencies and trade bodies operating in these sectors, will have the greatest interest in responding to this consultation.

We also welcome views from employment lawyers and those with an interest in the agency worker legislation.

Territorial extent:

The changes proposed in this consultation would apply to Great Britain, and so we particularly invite views from stakeholders in England, Scotland and Wales.

How to respond

Respond online at: <https://beisgovuk.citizenspace.com/lm/employment-agencies-handling-payment>

or

Email to: agencyworkersconsultation@beis.gov.uk

Write to:

Labour Market Directorate
Department for Business, Energy and Industrial Strategy
4th Floor, Victoria 1
1 Victoria Street
London
SW1H 0ET

When responding, please state whether you are responding as an individual or representing the views of an organisation.

Your response will be most useful if it is framed in direct response to the questions posed, though further comments and evidence are also welcome.

Confidentiality and data protection

Information you provide in response to this consultation, including personal information, may be disclosed in accordance with UK legislation (the Freedom of Information Act 2000, the Data Protection Act 2018 and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential please tell us, but be aware that we cannot guarantee confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded by us as a confidentiality request.

We will process your personal data in accordance with all applicable data protection laws. See our [privacy policy](#).

We will summarise all responses and publish this summary on [GOV.UK](#). The summary will include a list of names or organisations that responded, but not people's personal names, addresses or other contact details.

Quality assurance

This consultation has been carried out in accordance with the government's [consultation principles](#).

If you have any complaints about the way this consultation has been conducted, please email: beis.bru@beis.gov.uk.

The proposals

Background

The relevant legislation that covers the entertainment, sport and modelling sectors is the Employment Agencies Act 1973 (the 1973 Act) and the associated Conduct of Employment Agencies and Employment Businesses Regulations 2003 (the Conduct Regulations). The protections we are concerned with relate to the non-charging of fees for work-finding services and who is permitted to handle a work-seeker's pay.

Both employment agencies and employment businesses are generally prohibited from charging a work-seeker a work-finding fee under the 1973 Act. Under the Conduct Regulations, employment agencies are prohibited from being involved in paying the work-seeker on behalf of the employer (hirer), whereas employment businesses (typically the employer) do usually pay the work-seeker.

Employment agencies in the entertainment, sport and modelling sectors are exempt from the usual restrictions on employment agencies charging work-finding fees and handling payment as they are included in Schedule 3 to the Conduct Regulations.

Detail

There is a practice in which some entertainment, sport and modelling agencies charge or obtain their work finding fees from a hirer and also handle a work-seeker's pay. This practice is commonly referred to as the 'agency supplement'.

Subject to certain conditions, an entertainment, sport or modelling agency is permitted to charge a fee for work-finding services to either the hirer or the work-seeker as they are seeking employment for work-seekers in occupations set out in Schedule 3 of the Conduct Regulations (see regulation 26(1)).

Whether the agency charges the hirer or the work-seeker in turn determines whether the agency is permitted to handle the work-seeker's pay. If the agency charges the work-seeker (a pure commission model) they are permitted to pay the work-seeker on behalf of the hirer. If agency charges the hirer (the agency supplement model), they cannot handle the work-seeker's pay (regulation 8, in combination with regulation 26). In this instance, the effect is that the hirer must make a separate payment to the work-seeker for their pay and to the agency for their commission. Therefore, the 'agency supplement' as it currently operates is not permitted under the regulations.

We are seeking views on the impact of the two options below for how the Government should respond to the issue of the agency supplement. These include:

- maintaining the current legal position that an agency cannot charge a hirer the fee and pay the work-seeker. This would involve updating Government guidance to reflect the law as it currently stands and EAS would enforce the regulations against non-compliant businesses in line with their compliance-based approach. We expect this to have a minimal impact on businesses in affected sectors.
- amending the relevant regulation to permit the continued use of the agency supplement. This would involve amending regulation 8(2) of the Conduct Regulations to enable agencies operating under the Schedule 3 exemption to handle payment when the hirer is charged, as well as when the work-seeker is charged. Any changes to regulation 8 would only apply to employment agencies and would not affect legislation applicable only to employment businesses. We expect there would be some limited familiarisation costs for businesses in affected sectors.

It is worth noting we are not seeking views on expanding the current list of sectors who can operate under the schedule 3 exemption or on any other amendments to the Conduct Regulations.

Consultation questions

General

1. Are you a hirer, employment agency/independent agent, union, or a work-seeker?
2. If you are a hirer, employment agency or independent agent, what is the size of your business?
 - 2.1 <10 (Micro)
 - 2.2 11-50 (Small)
 - 2.3 51-250 (Medium)
 - 2.4 250+ (Large)

Questions for employment agencies / independent agents

3. Are you covered by the exemption to charge fees to work-seekers as stated by schedule 3 to the Conduct Regulations?
4. If so, which of the occupations covered by schedule 3 do you operate in?

Questions for work-seekers and unions / employers' associations

5. Which sector do you or your members primarily work in and what is your occupation?
6. Do you or your members work in any other sectors?
7. Have you or your members moved to working in a single sector in the past 12 months?
Or have you or your members started working in multiple sectors in the past 12 months?

Payment handling

8. Are you involved in paying the work-seekers?

Questions for employment agencies / independent agents

9. Do you have a standard approach to operating the agency supplement or charging commission to work-seekers?
10. Or do you adapt your approach depending on the sector or occupation?
11. If you use the 'agency supplement', which occupations do you use it for?
12. For occupations where you use the 'agency supplement', what proportion of the work is paid using the 'agency supplement'?

12.1 All

12.2 Most

12.3 Half

12.4 Less than half

Questions for work-seekers

13. Do you know if you are paid by your agent or the hirer you are working for?
14. Do you think there are benefits or drawbacks to you of being paid by your agent or by the hirer you work for?

Questions for unions / employers' associations

15. Are your members (work-seekers) paid by their agent or the hirer they are working for?
16. Are there benefits or drawbacks to your members (work-seekers) of being paid by their agent or the hirer they work for?

Impact of options

17. What would the impact be of not permitting the continued use of the agency supplement?
18. What would be the impact of permitting the continued use of the 'agency supplement'?
19. Is there anything else you would like to add, about whether the 'agency supplement' continues or not?

This consultation is available from: www.gov.uk/government/consultations/payment-handling-by-employment-agencies-in-the-entertainment-sport-and-modelling-sectors

If you need a version of this document in a more accessible format, please email agencyworkersconsultation@beis.gov.uk. Please tell us what format you need. It will help us if you say what assistive technology you use.