

MUSIC LAW UPDATES

New UK Regulations for Booking Agencies and Entertainment Agents:

The Conduct of Employment Agencies and Employment Businesses Regulations 2003 -

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The Conduct of Employment Agencies and Employment Business Regulations will come into force in the United Kingdom, in the main, on 6 April 2004. The Regulations affect all employment agencies and employment businesses including entertainment agents and booking agents. The aim of the Regulations are "to make provision to secure the proper conduct of employment agencies and employment businesses and to protect the interests of persons using their services." The Regulations include new procedural obligations.

The major impact on UK booking agencies will be the requirement to have strict "compliance" procedures in place. In general, the regulations do not have any specific changes that will conflict with the usual day to day running of the agencies in their normal course of business, but a lot of additional paperwork will need to be generated.

The Agents Association are currently working on the idea of developing a "Terms of Business" (ToB) letter that be issued to artists / clients that will cover the majority of the requirements of these regulations, along with a similar ToB to issue to Hirers (promoters) to satisfy the requirements. In the main agencies and employment businesses cannot charge a fee to the potential employee - the "**work seeker**". However there are a number of occupations listed in Schedule 3 where agencies may charge fees to work-seekers. These include "actor, musician, singer, dancer, or other performer; composer, writer, artist, director, production manager, production designer, recording engineer, choreographer, theatre designer, photographic or fashion model and professional sports person." Clearly bands and music groups are covered.

Agencies and employment businesses will be required to confirm the identity of the work-seeker and confirm that they have the experience, training and qualifications that the **hirer** expects for that position offered; Agencies and employment businesses will also have to obtain information on any health and safety risks known to the hirer and the steps taken to prevent or control those risks; The Regulations set out the requirements to be satisfied, and information which has to be obtained and communicated, to both the work-seeker and hirer, in relation to positions that a work-seeker may work in, or that a hirer seeks to fill. It provides for additional requirements where professional qualifications are required or where work-seekers may work with vulnerable persons.

Part VI of the Regulations sets out the requirements to be satisfied where agencies operate client accounts, and specifies in what situations fees may be charged to work-seekers. The Regulations provide that "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". This can be dealt with by clause on contracts. However there are further regulations which govern client accounts and monies paid to an agency as an advance against the work-seeker's payments by a hirer. Agents must be aware of these provisions (see 4 below).

Part VII contains miscellaneous regulations dealing with advertisements, confidentiality and the application of the regulations to incorporated work-seekers. It also sets out what records agencies and employment businesses have to maintain, and makes provision for where requirements contained in the Regulations can be satisfied by electronic or other means. There are a number of areas where there are **obligations** placed on the Employment Agency:

1. The Provision of a Statement of Terms of Business to the Work Seeker

The Agent must notify any work-seeker of its terms of business and details of any fee (charges) which will apply. The method of calculation of the fee must be specified along with who the fee is payable to, the detail what services are to be provided for the fee and detail of any refunds etc. The work-seeker must agree to the terms of business and they must be recorded in documentary form.

Regulation 16 states that the **written** terms must include:

- (a) details of the work-finding services to be provided by the agency
- (b) details of the agency's authority, if any, to act on behalf of the work-seeker, including whether, and if so, upon what terms it is authorised to enter into contracts.
- (c) a statement as to whether the agency is authorised to receive money on behalf of the work-seeker;
- (d) details of any fee which may be payable by the work-seeker to the agency for work-finding services including - The amount or the method of calculation of the fee a description of the particular work-finding service to which the fee relates; the circumstances, if any, in which refunds or rebates are payable to the work-seeker, the scale of such refunds or rebates (or state that no refunds are payable). The position regarding cancellations. the method of payment of the fee and, if the fee is to be deducted from the work-seeker's earnings received by the agency, the circumstances in which it is to be so deducted; a statement as to whether the work-seeker is required to give notice to terminate the contract between the work-seeker and the agency and, if so, a statement as to the length of the notice required; The agency cannot sub-contract any of their rights without the written consent of the work-seeker (artist)

2. The Agreement with Hirer

There is an obligation of the agency to agree terms in advance with the Hirer and to make sure that any engagement is suitable for the work-seeker (Regulations 16 &17). Regulation 18 provides that an agency must obtain details from the hirer in advance about any engagement before the introduction of any work-seeker and Regulation 19 provides that an agency cannot introduce or supply a work-seeker to a hirer unless it has obtained confirmation of basic information about the work seeker (see 4 below). Where the Hirer and the Agency are connected (for example part of the same group of companies, or where the agent and hirer are related) the agent must make the work seeker aware of this (Regulation 26).

3. Entering into a Contract on Behalf of a Client

Where an agency enters into a contract on behalf of a work-seeker with a hirer, or on behalf of a hirer with a work-seeker, the agency shall ensure that the terms of the contract are notified to their client as soon as is reasonably practicable and in any event no later than the end of the fifth business day following the day on which the agency entered into the contract. The agency must keep all records relating to an engagement (including contracts, letters, statements) for at least one (1) year and these must be produced within two (2) days of request by the artist (work seeker).

4. An Obligation to Keep Proper Records

Regulation 29 (detailed in Schedules 4 and 5) provide that an agency is obliged to keep records for both work-seekers and hirers including basic details of work-seekers such as their name, address, age (if under 22), experience and the terms agreed with the work-seeker.

There are also a number of provisions which relate to the keeping and preserving of accounts.

If an agency is receiving client's money it must be kept in a client account. Any monies received must be paid into the client account within two (2) days. Payments to the work seeker (artist) should be within ten (10) days after the engagement, not from receipt. If any clients monies are paid to a third party (i.e. any tour suppliers) then written agreement from the artist must be obtained. If monies are held for more than thirty (30) days a statement must be sent to the artist and interest will accrue and be paid to the artist: although no definition of interest calculation is given. Only artist's payments and commissions can be kept in the client account and separate account ledgers must be kept with a monthly statement available to the Artist. An Employment Agency/Business must have an annual audit and all financial records must be kept for six (6) years.

This article is for general information only and should not be treated as legal advice.

The full document can be seen at: http://www.hmso.gov.uk/cgi-bin/htm_hl.pl?DB=hmso-new&STEMMER=en&WORDS=employ+agenc+&COLOUR=Red&STYLE=s&URL=http://www.hmso.gov.uk/si/si2003/draft/20038313.htm#muscat_highlighter_first_match

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See also an article by Richard Taylor of the Simkins Partnership at: <http://www.simkins.co.uk/articles/RHTPerformSportModel.aspx>