

ISLE OF MAN DEPARTMENT OF TRADE & INDUSTRY

THE EMPLOYMENT AGENCIES ACT 1975

GUIDANCE NOTES

These notes are intended to provide a general guide for persons who are considering establishing an employment agency or an employment business, from premises in the Isle of Man, having regard to the licensing and regulatory provisions of the above Act. The notes should not be taken as a complete and authoritative statement of the law.

TO WHOM DOES THE ACT APPLY?

The Act applies to employment agencies and employment businesses whether or not they are carried on for profit or in conjunction with any other business. Those that deal with freelance or self-employed workers (for example, model agencies) are within scope as well as those that deal with workers on a normal contract of employment basis.

EMPLOYMENT AGENCIES

Under the Act an employment agency is defined as: "the business (whether or not carried on with a view to profit and whether or not carried on in conjunction with any other business) of providing services (whether by the provision of information or otherwise) for the purpose of finding workers employment with employers or of supplying employers with workers for employment by them".

Notes

1. Au pair agencies are covered by the Act.
2. The providing of services by information does not include:
 - (a) a newspaper or other publication unless it is published wholly or mainly for finding workers for employers;
 - (b) the display of advertisements by any person on premises which he occupies for purposes other than those of an employment agency;
 - (c) sound or television broadcasting.

EMPLOYMENT BUSINESSES

The Act defines an employment business as: "the business (whether or not carried on with a view to profit and whether or not carried on in conjunction with any other business) of supplying persons in the employment of the person carrying on the

business, to act for, and under the control of, other persons in any capacity".

EXCLUSIONS

The principal exclusions are:

- (i) Services for the supply of qualified nurses and certified midwives covered by the Nurses and Midwives Act 1947. Note: Any other employment agency or employment business service involving other categories of workers carried out at the same premises in conjunction with these services is not excluded;
- (ii) The business carried on by any county or district nursing association or other similar organisation, being an association or organisation established and existing wholly or mainly for the purpose of providing patients with the services of a nurse to visit them in their own homes without herself taking up residence there;
- (iii) Services which are ancillary to the letting upon hire of any aircraft, vessel, vehicle, plant or equipment;
- (iv) The making of arrangements for finding seamen for persons seeking to employ seamen or for finding employment for seamen;
- (v) The exercise by a local authority of any of its functions;
- (vi) Services provided by any organisation of employers or organisation of workers for its members;
- (vii) Services provided by a Board/Department of Tynwald;
- (viii) Any business carried on, or any services provided by, such persons or classes of persons as may be prescribed.

LICENSING

Anyone who carries on an employment agency or employment business covered by the Act without a current licence issued by the Department of Trade & Industry will, on conviction, be liable to a fine.

WHAT APPLICANTS SHOULD DO

Applications for licences should be made to Employment Services, Department of Trade & Industry, Hamilton House, Peel Road, Douglas IM1 5EP. Application forms will be supplied on request.

A FEE FOR A 12 MONTH LICENCE IS £108. The same fee applies whether the licence is for a fresh application or an application to renew an existing licence.

BEFORE MAKING AN APPLICATION FOR A NEW LICENCE, AN APPLICANT MUST:

- (a) not less than forty-two days before making his application serve on the Department of Trade & Industry notice of his intention to make the application; and
- (b) not less than twenty-one days before making his application:
 - (i) display notice of the application FOR A PERIOD OF 21 DAYS on or near the premises concerned in a place where it can conveniently be read by the public;

and;
 - (ii) advertise notice of the application in 2 newspapers approved by the Department of Trade & Industry.

Applications for licences must be accompanied by a certificate signed by the applicant, confirming that the provisions outlined in (b)(i) have been complied with, and also by copies of the press adverts which provide confirmation of the particular newspapers in which they appeared.

Copies of a "Notice of Application" form, (EA2) can be obtained from Employment Services.

For the purpose of completing the Notice of Application and the Application form, the classes of business to be carried out must be specified in accordance with the following list:

- 1) Professional, managerial and executive;
- 2) Medical, dental, persons without nursing qualifications providing nursing care;
- 3) Secretarial, clerical, computer staffs;
- 4) Draughtsmen;
- 5) Performers, producers, directors etc in the entertainment industry;
- 6) Fashion and photographic models;
- 7) Au-pairs;
- 8) Hotel and catering workers;
- 9) Domestic and cleaners;
- 10) Construction Industry workers;
- 11) Engineering industry workers;
- 12) Other employment (specify)

REFUSAL OR REVOCATION OF LICENCE

The Department of Trade & Industry has power to refuse or to revoke a licence on the grounds that:

- the applicant is under 21 years of age;

- the applicant, or any other person concerned with the carrying on of the business, is unsuitable because of misconduct or for other sufficient reason, to hold a licence or be associated with a business of the kind in question;
- the premises are unsuitable for the type of business concerned;
- the employment agency or employment business has been, or is being, improperly conducted.

The Act enables an applicant or licence holder to make representations against a proposal by the Department of Trade & Industry to refuse or to revoke a licence, and for the question to be referred to a Tribunal.

DISPLAY OF LICENCE AND REGULATIONS

All licence holders must display on their premises, in a position easily seen by people who use their services, the licence and a copy of the regulations made under the Act. Failure to comply is an offence and the licence holder is liable on conviction to a fine.

PROHIBITION ON CHARGING WORKERS FEES

Employment agencies and employment businesses within scope of this Act are prohibited from demanding, or directly or indirectly receiving from any worker a fee for finding or seeking to find him employment. Those who contravene this provision are, on conviction, liable to a fine. The only exception is the commission charged by entertainment and model agencies in certain cases.

INSPECTION

The Act enables an officer authorised by the Department of Trade & Industry, on production of written evidence of such authority if so required, to enter and inspect, at any reasonable time, premises that are licensed under the Act or in respect of which a licence has been applied for, or premises which the authorised officer has reasonable cause to believe are used for carrying on an employment agency or employment business. He also has power to inspect any records or documents kept in accordance with the Act or regulations and to require the furnishing of such information as he may reasonably need to ascertain whether the Act and regulations are being complied with.

Anyone who contravenes or fails to comply with any of the regulations made under section 5 of the Act to secure the proper conduct of employment agencies and businesses or who makes, causes to be made, or knowingly allows false entries to be made in any record or document that has to be kept under the Act or regulations, will be liable on conviction to a fine.

IF YOU CARRY ON AN EMPLOYMENT AGENCY AND/OR AN EMPLOYMENT BUSINESS, MAKE SURE THAT IT IS PROPERLY LICENSED IN ACCORDANCE WITH THE ACT. COPIES OF THE ACT/REGULATIONS MAY BE PURCHASED FROM THE CENTRAL REFERENCE LIBRARY, GOVERNMENT OFFICES, DOUGLAS: Tel: (01624) 685516.

Should further information or assistance be required, inquiries should be directed to:

**Vicki Webster, Operations Executive
Department of Trade & Industry
Employment Services
Hamilton House
Peel Road
Douglas IM1 5EP**

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