EXPLANATORY MEMORANDUM TO

THE CONDUCT OF EMPLOYMENT AGENCIES AND EMPLOYMENT BUSINESSES (AMENDMENT) REGULATIONS 2019

2019 No. 725

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument amends the Conduct of Employment Agencies and Employment Businesses Regulations 2003 to the effect of requiring that agency workers be given a 'key information document' by an employment business before they engage with that employment business.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 The territorial application of this instrument includes Scotland.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales and Scotland.

4.2 The territorial application of this instrument is England and Wales and Scotland.

5. European Convention on Human Rights

5.1 The Minister for Small Business, Consumers and Corporate Responsibility has made the following statement regarding Human Rights:

"In my view the provisions of the Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 Section 5 of the Employment Agencies Act 1973 allows the Secretary of State to make regulations to secure the proper conduct of employment agencies and employment businesses and to protect the interests of work seekers who use such businesses. The Conduct of Employment Agencies and Employment Businesses Regulation 2003 ('the Conduct Regulations') do this by placing a number of requirements on employment agencies and employment businesses, in order, in part, to ensure the fair treatment of work seekers.

6.2 This instrument inserts a new regulation 13A to the Conduct Regulations. This new regulation will require employment businesses to issue agency workers with a 'key information document' in order to ensure greater transparency for agency workers, principally regarding their pay. It sets out the information that this document must contain, certain limitations as to its length, and when it must be provided.

6.3 The Employment Agency Standards Inspectorate (EAS) are the authority appointed under section 8A of the Employment Agencies Act 1973 to enforce the Conduct Regulations. They will be responsible for ensuring the new requirement for a key information document is complied with.

7. Policy background

What is being done and why?

7.1 Matthew Taylor's Review of Modern Employment Practices was concerned that the range of different ways that agency workers could be paid, and the various fees and deductions involved, was confusing. The review recommended that government improve the transparency of information available to agency workers, particularly around pay. The government committed to do this by way of a key information document. This instrument sets out the information the document must contain, some elements of the process around producing it (such as timelines), and some requirements as to format.

7.2 The instrument requires that the key information document be given to the person seeking work through an employment business ('work seeker') ahead of them signing terms with the employment business. It requires that it must be separate from other documents provided to the work seeker, and clearly titled. This is to ensure the work seeker is able to understand and consider the information in the document before they formally engage with the employment business.

7.3 It is the responsibility of the employment business to produce the key information document, including when the worker is paid through another means (such as an umbrella company or similar intermediary). This is to help ensure employment businesses are appropriately diligent about the way in which the workers that rely on their services are paid. The regulation will only apply to new work seekers signing on to an employment business after April 2020.

7.4 In order to make the key information document as understandable and transparent as possible, the information it is required to contain is limited to a number of largely pay-related facts. This includes: the minimum rate of remuneration payable to a work seeker, the identity of who will pay the work seeker, and the nature and amount of any deductions made to the work seekers remuneration. If the worker is to be paid through an alternative mechanism, eg. through an umbrella company or similar intermediary, information about the company or intermediary and the deductions they will make must be included too. The document must include an illustrative example of the deductions made and resultant take home pay for an exemplar rate of gross pay.

7.5 The document will also need to be clear and succinct, a maximum of two sides of A4-sized paper, and readable. The employment business will also have to demonstrate that the document has been given to the worker.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 This instrument is amending a single, consolidated set of regulations.

10. Consultation outcome

10.1 The government carried out a consultation on the Taylor Review's agency worker recommendations from 7 February to 9 May 2018. The consultation received 97 responses in total. There was, with some exceptions, broad support for improving the transparency available to work seekers through a key information document. There was a variation of views as to the amount of information that should be included, and elements of process around producing it. Concerns included ensuring the key information document was not an unnecessary burden on employment businesses and ensuring information from organisations responsible for paying workers (eg. umbrella companies) was reflected appropriately.

11. Guidance

11.1 The Department for Business, Energy and Industrial Strategy and EAS will work with stakeholders to produce guidance on the key information document. This guidance will be ready before the requirement comes into force in April 2020.

12. Impact

12.1 The impact on business, charities or voluntary bodies will primarily be through collecting the information required for the key information document and producing the document.

12.2 There is no, or no significant, impact on the public sector.

12.3 A de minimis impact assessment has been produced for this regulation and estimated the cost over ten years at £44.6 million in Net Present Value terms, which equates to an annualised impact of £4.5 million.

13. Regulating small business

13.1 This instrument applies to activities that are undertaken by small businesses.

13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people) the approach taken is that agency workers will only require a key information document when they seek to engage with an employment business and following any relevant changes to the content of the document. As explained, the requirement will also only apply to new work seekers, from April 2020.

14. Monitoring & review

14.1 EAS will monitor the implementation of this legislation through their routine enforcement of the Conduct Regulations and regular discussions with stakeholders in the employment industry.

14.2 A statutory review clause is included in the instrument.

15. Contact

15.1 Ian Jordan at the Department for Business, Energy and Industrial Strategy, telephone 0207 215 0209 or email ian.jordan@beis.gov.uk, can be contacted with any queries regarding the instrument.

15.2 Emma Waite at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.

15.3 Kelly Tolhurst MP at the Department for Business, Energy and Industrial Strategy can confirm that this Explanatory Memorandum meets the required standard.