



Q [1] What do I have to do when registering work-seekers?

A Under the Conduct Regulations agencies and employment businesses are required to meet a minimum standard of recruitment practice.

Please see on the Conduct Regulations for detailed guidance on what the regulations provide for on the issues that must be dealt with on registration.

In terms of registering a work seeker, amongst requirements of the Conduct Regulations, you must also obtain confirmation of the following:

- The identity of the work seeker;
- That the work seeker has the experience, training, qualifications and any authorisation considered necessary or required by law or a professional body to work in that position; and
- That the work seeker is willing to work in the position, which the hirer seeks, to fill i.e. you, should be discussing the position with the work seeker before putting their details forward. In addition, an agency or employment business is required to agree terms between them and the work seeker to confirm how they are to provide work finding services.

Q [2] Checking Identity - How do I check the identity of a work seekers for the purposes of the Conduct Regulations and for permission to work in the UK?

A Please see –Checking identity of work seekers

Q [3] How do I check that a work seeker has the experience, training, qualifications and authorizations for the position?

A A recruiter is required to confirm that a work seeker has the experience, training or qualifications necessary for the position.

In order to select a suitably qualified and skilled candidate a recruiter must research the position the client wishes to fill. This will often involve finding out from the client what skills, qualifications and experience they consider necessary, or researching what skills and qualifications are required for the position by law. The Conduct Regulations set out the basic information that needs to be obtained before introduction or supply of a work seeker. Please see section for detailed guidance on information providing requirements, question 10.1.1.

With detailed knowledge of the position and the client's business, you should then confirm that the work seeker has the required skills and experience for the position.

It is considered good practice to discuss candidate's skill set face to face, so that you can assess the extent of their experience and/or skills and to undertake reference checks on a work seeker. See question 11 below for detailed discussion on reference checking obligations. In the example where a client says a particular qualification is required in order to perform the job, then you should see a copy of the certificate and/or check their registration details with their professional or regulatory body.



Q [4] What are the additional requirements where professional qualifications are required, or where work-seekers are to work with vulnerable persons?

A If a recruiter is introducing or supplying a work seeker who is required by law or a professional body to have certain qualifications or authorisations; or is to work with or care for people under 18; or to care for or attend the aged or infirm, or those otherwise in need of care and attention, then the obligations on checking suitability of candidates are significantly greater. These additional requirements are contained in regulation 22 of the Conduct regulations. For such work seekers, a recruiter must:

- Obtain copies of any relevant qualifications or authorisation as may be required and offer to provide these to the hirer (or take all reasonable steps to obtain such copies and notify the hirer that none are available);
- Obtain two references (or take steps to obtain such references) from persons not related to the work seeker (this need not be a current or former employer but may be a Bank Manager or teacher/tutor) and with their consent to pass these on to the hirer, (or take all reasonable steps to obtain such references and inform the hirer that you were unable to obtain these); and
- In the case of positions involving working or caring for people under 18, working or caring for the aged, infirm or those in need in care of attention, the recruiter must also take all reasonably practicable steps to ensure that the work seeker is not unsuitable for the position i.e. CRB checks must be obtained where appropriate Essentially when a recruiter introduces or supplies a work seeker to work with the vulnerable having undertaken such checks under Regulation 22, they must be satisfied in all the circumstances and on an objective basis that the worker is suitable for the role.

Q [5] What are the obligations on agencies and employment businesses obtaining references on work seekers?

A Under the Conduct Regulations there is a duty on agencies and employment businesses to take up references on work seekers in certain circumstances as set out under Regulation 22 (2) (b).

If a recruiter is introducing or supplying a work seeker who is required by law or a professional body to have certain qualifications or authorisations; or is to work with or care for people under 18; or to care for or attend the aged or infirm, or those otherwise in need of care and attention, a recruiter, amongst other checks, must obtain two references (or take steps to obtain such references) from persons not related to the work seeker. Such references need not be a current or former employer, but may be a Bank Manager or teacher/tutor. With the referee's consent the references must be passed on to the hirer.

Where a recruiter has taken all reasonable steps to obtain references, but has been unable to do so, they must inform the hirer that they have taken all reasonable steps to comply with Regulation 22 and confirm what steps they have taken.

For all other positions not covered by Regulation 22, although taking up references may not be strictly required under the Conduct Regulations, it is considered good practice to do so, as reference taking is an excellent way of checking a candidate's suitability. In any event a recruiter is still required to check whether the candidate possesses the skills, experience and training required for the role before introduction or supply to a client.

**RECRUITING & CHECKING STAFF POLICY**

Q [6] How can I confirm that a work seeker is willing to work in the position, which the hirer seeks to fill?

A This is an essential element of registration. You should be discussing the position with the work seeker before putting their details forward and should obtain confirmation as to the nature of the search they wish you to undertake. This is usually dealt with at an early stage on the registration process.

As a recruitment company it may be clear that an individual who registers with you for temporary or permanent work will be happy for you to send their details to prospective employers. This however may only be limited to one single employer if they have responded to an advertisement for a specific position with a named company for example, so if you intend to send their details to other potential employers as a general work finding service you should make this clear and ask for their permission.

Q [7] What terms do I need to agree with a work seeker?

A Under Regulation 14 of the Conduct Regulations an agency or employment business must obtain the agreement of a work seeker to the terms, which will apply between them and the work seeker before providing their recruitment services. Please see Conduct Regulations question 8.2.2 for detailed guidance.

Q [8] What terms must be agreed between an agency and a candidate seeking permanent employment

A Under Regulation 14 of the Conduct Regulations employment agencies (such as permanent recruiters) are required to obtain agreement of terms with work seekers before providing them work finding services.

However, the only 'terms' that normally need to be agreed by employment agencies with such work seekers are (i) whether you are acting as an employment agency or an employment business, in other words, whether you are to look for temporary or permanent opportunities for the worker (this will be obvious if the work-seeker has registered with you for permanent vacancies) and (ii) the type of work you are going to seek to find for the work seeker (which will often be dealt with on a registration form, or through initial discussion or correspondence). Whether you deal with these two issues over the phone, email, written correspondence or through the means of a registration form or brochure is a matter for members to decide; however you must confirm these issues to the work seeker and retain a copy of the agreement/ confirmation within your candidate records.

For a standard wording for a candidate agreement please see the REC's Members Legal pages of the website for Model Terms and Conditions. Certain agencies operating within the entertainment and sporting industry are permitted to charge a work seeker a fee in certain circumstances. For such agencies, the terms of agreement with a work seeker covered by regulation 14 must also include additional terms in line with Regulation 16 such as:

- The work finding services to be provided;
- The agency's authority and terms to act for the work seeker on their behalf;
- Whether the agency is authorised to receive money on behalf of the work seeker;
- Details of any fee to be charged to the work seeker; and
- Length of any notice of termination the work seeker is required to give, or receive.

**RECRUITING & CHECKING STAFF POLICY**

Q [9] What terms must be agreed between an employment business and a temporary worker?

A Please see section for detailed guidance, question 8.2.2 for detail on the requirements to agree terms and question 10.1.1 for a list of the basic information that needs to be confirmed to a work seeker when offering a position.

If a work seeker seeks temporary work you must give the temporary worker terms of business as early as practicable. Please see REC's website Model Terms and Conditions for the REC's model terms of engagement for PAYE temporary workers.

Q [10] Can I charge a work seeker a fee for providing recruitment services?

A No. Under regulation 6 the Employment Agencies Act 1973 it is a criminal offence for a recruitment agency to charge a work seeker a fee for finding or seeking to find employment, except in the specified classes of role under the Conduct Regulations.

The classes of role where charging a fee for providing work finding services are permitted are narrow (these are set out in schedule 3 pursuant to Regulation 26 of the Conduct Regulations). These roles include positions such as actors, models and sports people. It is also possible to charge a Limited Company a fee for work finding services in certain circumstances. For detailed discussion of this issue please see section question 9.

Q [11] What additional steps should I take when registering a disabled candidate?

A Following the amendments to the Disability Discrimination Act (DDA) on 1st October 2004 which strengthened service providers' obligations to enable disabled people access to their services together with the broader requirements of the DDA, we set out below some good practice tips for recruiters to follow in order to ensure that you comply with the DDA during the registration process.

- Find out about a disabled candidate's needs in terms of what reasonable adjustments are required to provide them access to your service. For example, if someone informs you that they are disabled, discuss with them the reasonable adjustments required to register with you and use your service or the adjustments required for interview or selection so that adequate preparations can be made.
- Review how accessible your recruitment services are for disabled people. From 1 October 2004 service providers such as employment agencies and employment businesses are under an obligation to remove or alter any physical features, which may make it difficult or impossible for a disabled person to access the service, or they must provide their service by a reasonable alternative means. Such obligations to provide access to services are subject to the test of reasonableness under the DDA. Be flexible in your registration and assessment arrangements.
- Find out about a disabled candidate's needs in terms of what reasonable adjustments would be required to enable them to do the job. By consulting with a candidate on these issues early, you and your clients will be in a much better position to make the necessary reasonable adjustments for the worker.
- Make sure your clients deal with reasonable adjustments before the relevant employment or engagement begins.
- Questions on application forms about a person's health or disability should be appropriately worded (for example: "do you have a health problem or disability which is relevant to your job application in order for us to consider what adjustments might be needed to provide you with equal opportunity" or "If you have a disability, what are your needs in terms of reasonable adjustments in order to access this recruitment service and what are your needs in terms of reasonable adjustments to enable you to perform the role") and such information must be treated in confidence.

**RECRUITING & CHECKING STAFF POLICY**

- Don't make assumptions about disabled people. The nature and extent of people's disabilities varies considerably. Therefore be proactive and find out about an individual's skills and abilities during registration. If you make stereotypical assumptions about a person with a disability and do not consider their skills and abilities, this may amount to direct discrimination.
 - Avoid making assumptions on whether a disabled candidate will pose a risk to health & safety, as stereotypical assumptions may amount to indirect or even direct discrimination. A disabled person is not necessarily any greater risk to health and safety than a non-disabled person. Any risks involved with a job should be carefully discussed and considered with the client, bearing in mind that clients are under a duty to make reasonable adjustments for disabled candidates. Genuine concerns for health & safety risks in certain circumstances may form justification for less favourable treatment if they are material and substantial reasons.
 - Only find out details about a disability if it is relevant to accessing the recruitment service and relevant to the job. If a medical check is necessary it must be justifiable in the circumstances.
 - Train your staff to be aware of their obligations under the DDA and to be positive about candidates with disability.
 - Take expert help or advice when considering how to deal with a person's disability, or making a reasonable adjustment to premises or policy. The organisation Remploy offers financial assistance to assist with facilitating access to employment for the disabled. . Telephone: 0207 193 0228
 - Implement an equal opportunities policy and continue to monitor and audit the policy. You could even consider developing a diversity policy and signing up to the REC's diversity pledge. Such a diversity pledge can be adopted by those recruiters who are seeking to take an inclusive and proactive approach to recruiting disabled people.
- For more information on disability rights and the disability rights commission's codes of practice please see the disability rights commission's website.

Q [12] How do I register a worker seeker who supplies their services through a company?

A Employment Businesses engaging work seekers supplying their services through a Limited Company (LCC) must observe the Conduct Regulations for such work seekers as though they were PAYE temporary workers. Please see above for more detail on the basic issues that need to be dealt with when registering a work seeker or LLC.

Dealing with Limited Company Contractors can be complex and members should read Section 8 Dealing with Limited Company Contractors.

One fundamental issue which you should clarify as soon as practicable is whether the LCC wishes to opt out of the protection of the Conduct Regulations.

While the Conduct Regulations apply to work-seekers who are limited company contractors, the company and the individual supplied by the company to carry out the work may agree, by giving you notice, that the Conduct Regulations shall not apply to them. This is not permitted if the individual is to be supplied to work with anyone under-18 or in need of care or attention by reason of age, infirmity or some other reason.

**RECRUITING & CHECKING STAFF POLICY**

The opt out provisions contained in Regulation 32(9) has not been worded as clearly as it might have been and therefore it is open to debate whether you will be relieved of your obligations to the hirer if the limited company work seeker decides to opt out. The DTI say that it was their intention that should be the case, so that if the limited company contractor gives you notice that they wish to opt out of the protection of the 2003 Conduct Regulations for the duration of an assignment, you will also be relieved of complying with your obligations to the hirer that arise during the course of or following that assignment. This means that where a company and the individual have opted out you will not be bound by the restrictions of the Conduct Regulations, for example such as the restrictions on charging fees to clients.

Consequently the REC advises that you inform the hirer if the limited company contractor has opted out and that as a result you are not bound by the restrictions on charging Transfer fees. In fact we have drafted two sets of terms for you to use in the event that a contractor opts out or does not.

An opt out must be given before the introduction and supply of the LCC and any opt out will not take effect during an assignment (Regulations 32 (9) and (11)). The individual supplied by the company to carry out the work may withdraw such notice by giving further notice to you but this will not take effect until the individual stops work in his/her current assignment.

Under 32 (9) the form that the opt out must take is not specified, for example it does not even mention that it has to be in writing. However, from a practical point of view members should always obtain an agreement to opt out in writing, as per our model opt out form, as this is the best evidence the worker and company supplying the worker have both agreed to the opt out. Ultimately it would almost always be a client or worker who would be claiming that the opt out is invalid, therefore if you have the opt out in writing, this would provide you a strong argument that the worker has opted out.

It is important to note that the consequences of an invalid opt out are far greater for a recruiter than for the LCC. Indeed it is significantly in your interests to ensure an opt out is validly given. If the work seeker gives an invalid opt out, the consequence for you as a recruiter is that your client or the worker could possibly argue that (by default) the worker is within the protection of the Regulations and as such they may argue certain clauses in your terms of business and terms of engagement are unenforceable. In particular, the enforceability of your transfer fees clauses, payment terms and restrictive covenants may be called in to question if the LCC or client can claim the opt out was not valid.

There is a model opt out form and for an opted out LCC. Another key issue which should be determined by you on registration is whether the LCC is inside or outside the tests of self-employment under IR35. An employment business is not required to enforce tax compliance on behalf of the Inland Revenue; however it is advisable that you issue LCCs with appropriate terms reflecting the reality of the LCC's status in the position. For example, is the LCC to be under the direction and control of the client, or is to have autonomy in the assignment and a right of substitution. For detailed discussion of IR35 please see.

Q [13] Should I check the identity of a worker seeker who supplies their services through a company?

A On registration it is essential that you have sight and retain a copy of the Limited Company's companies house registration documentation, such as the certificate of incorporation, articles of association and memorandum to confirm that the company is validly established.

As far as checking ID of an LCC is concerned, if the work seeker and company has not opted out then an agency or employment business must check the work seekers ID under regulation 19 of the Conduct Regulations and it may be advisable to undertake an immigration ID check in line with Home Office guidance.

**RECRUITING & CHECKING STAFF POLICY**

See for detail on the requirements for ID checking of temporary workers.

If a LCC opts out of the Conduct Regulations, although arguably the recruiter is relieved of the requirement of checking the ID of the work seeker pursuant to Regulation 19, it is advisable to confirm identity of the work seeker in any event.

Q [14] What other things should be checked when registering a LCC?

A It is advisable to check that a LCC has all the requisite insurance policies under their contract with the employment business and if necessary in certain circumstances you may wish to verify and see a copy of the policies. The reason for this is that a Limited Company contractor's liability for breach of contractual obligations is normally limited in law to the assets of the limited company; accordingly it is essential that an employment business verifies that insurance is in place to cover any liabilities or indemnities given the contract. In short, if you need to sue the LCC, are you certain they are funds (in the form of insurance cover) to compensate you?

Q [15] Can I offer an incentive to a LCC to opt out?

A You may not make the provision of work-finding services to a limited company contractor conditional upon the company and the individual contractor agreeing to opt-out. However it may be permissible to offer a higher rate to contractors who decide to opt out to reflect the reduced administration or the greater chance of recovering an Introduction or Transfer fee.

Q [16] Can I charge a LCC a fee for providing work finding services?

A The 2003 Conduct Regulations permit you to agree with a limited company contractor that you will charge the limited company a fee for seeking to find or finding them employment directly with a client or with another person. However, you may not charge a fee to the limited company if you are also charging a fee to the hirer upon a successful introduction. A form of agreement between you and a limited company contractor wishing you to look for work has been provided in the section of the REC website legal pages headed Model Terms and Conditions.