

# A guide for limited company contractors

On 6 April 2004 the government introduced the Conduct of Employment Agencies and Employment Business Regulations 2003 (the Conduct Regulations) to raise standards within the recruitment industry. Drafted by BERR (formerly known as the DTI), the Conduct Regulations stipulate how recruitment businesses should operate and provide, providing added protection for work seekers and companies using the services of recruiters.

From 6 July 2004 the Conduct Regulations were extended to cover work seekers who supply their services through a limited company, known as Limited Company Contractors (LCCs). In complying with the Conduct Regulations, recruiters owe LCCs similar obligations to those workers engaged on a PAYE basis.

## Opting out of the Regulations

During the consultation process before the Government introduced the Conduct Regulations, industry stakeholders such as the REC and Professional Contractors Group argued that LCCs did not want to be treated akin to PAYE workers under the Regulations as it was considered that legal protections needed to protect vulnerable workers are usually inappropriate for incorporated businesses and that the associated legal formalities would reduce the flexibility for recruiters and LCC's to decide their own terms of business. Accordingly BERR (formerly the DTI) has included a provision that enables LCCs to opt out of the protection of the Regulations.

Some of the consequences of remaining within the Regulations and opting out are discussed below.

## Deciding to remain within the Regulations

If you remain within the Conduct Regulations, a recruiter will owe you and the client a range of obligations. Some of the obligations the recruiter will be required to follow are as follows:

- A recruiter must confirm on what basis they are to offer work finding services, the type of work they are looking for you and the terms which apply between you.
- Before you commence an assignment or a position by the recruiter you must be given information about the proposed position including:
  - The identity of the hirer,
  - Start date,
  - Likely duration of the work,
  - Type of work,
  - Location,
  - Hours,

- Any risks to health and safety and steps the hirer has taken to prevent or control such risks,
- The experience, training and qualifications required for the role,
- Any expenses applicable, and
- The actual rate of remuneration to be paid.

Such information should be confirmed verbally and / or in writing.

- If you carry out work on an assignment, but are unable to obtain a signed timesheet, you are entitled to be paid for the hours you worked by an employment business. The employment business is however permitted to delay payment for a reasonable period to check whether you have worked the hours claimed.
- As a worker within the regulations you may not be subjected to a detriment or penalty as a result of you or the employment business terminating an assignment for example an employment business may not insert a clause in the contract seeking to prevent you from taking up employment directly with the client.

The decision to opt out is likely to be determined by the assignment and whether you will be regarded as genuinely self-employed. Under Inland Revenue IR35 rules there are a range of factors which are assessed to determine whether an LCC is genuinely self employed, such as the contractual relationship between the parties, the level of control a client maintains over the LCC, financial risk taken by the LCC in providing its services, whether there is a right of substitution in the LCC; turns on whether this is in fact ever exercised, whether the LCC provides it own tools or uses tools provided by the client hirer; and length of engagement. If you decide against opting out you will enjoy the legal protections of the Conduct Regulations and be treated by the recruiter akin to a PAYE worker. If you are genuinely self-employed then you may wish to consider opting out so as to achieve greater flexibility in negotiating your contract terms.



Whether you decide to remain within the Regulations or to opt out is a decision for you. The fact of being opted out, in itself, has little effect on your tax status but the fact that you are able to negotiate the terms of your contract may be considered by the Inland Revenue to reflect genuine self-employment. In any event, LCCs who are considering remaining within the Regulations or opting out should seek independent tax advice.

Under the Regulations, recruiters are required to carry out certain checks on work seekers and obtain information from clients in respect of the position and to supply such information to both client and worker. If you opt out, the Regulations do not apply to that assignment, which means there is less administration for the recruiter resulting in possible incentives to opt out. However the recruiter must not make their services conditional upon you opting out.

## How do I opt out?

In order to opt out, the LCC must give notice to the employment business before being introduced or supplied to a client. The notice must be in writing and signed both by an officer of the company or someone authorised to sign on the company's behalf and the individual who will be supplied by the company to do the work. Once you have given your notice to opt out, none of the Conduct

Regulations apply for the duration of the assignment. If you use the services of an REC member firm, they will be able to provide you with a standard opt out notification form.

## Charging LCCs for finding work

The Conduct Regulations permit recruiters in certain circumstances to charge LCCs a fee for introducing them to potential contacts and clients where the LCC will be engaged by the client directly. This is an exception to the general rule that recruiters may not charge fees to work seekers for providing work finding services.

## LCCs working with children and the vulnerable

Under the Conduct Regulations, an LCC may not opt out in relation to an assignment where they will be working with children or vulnerable persons i.e. working with children, the elderly or people with disabilities such as doctors, nurses or teachers.

## For more information

This note is not a definitive guide to your individual rights and further information can be obtained from BERR.

See the BERR's website: <http://www.berr.gov.uk>

You may also contact the BERRs Employment Standards hotline to obtain further information on **0845 955 5105**.

## The REC

The Recruitment and Employment Confederation (REC) is the trade body that supports and represents the recruitment industry. Worth £24.5 billion to the UK economy, the recruitment industry is responsible for placing 1.2 million temporary workers on assignment each week and placing over 700,000 employees in permanent work each year.

## Recruitment impacts on every sector of the UK economy

The REC's membership is made up of over 8,000 recruitment agencies and businesses (corporate members) and 6,000 recruitment professionals (individual members).

The REC seeks to promote high professional standards and good practice within the industry. REC members are required to adhere to the REC Code of Practice which is available to view on our website [www.rec.uk.com](http://www.rec.uk.com). The REC Code of Good Recruitment Practice has been created in consultation with industry stakeholders to ensure that all members of the REC conduct their business ethically and to the highest standards.

The Professional Contractors Group (PCG) is a not for profit trade association representing some 12,000 freelance professionals in the UK.

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