No. 588

MINISTRY FOR EUROPEAN FUNDS, EQUALITY, REFORMS AND SOCIAL DIALOGUE

Explanatory Notes

1. Introduction

Title of Regulations	Employment Agencies (Amendment No. 2) Regulations, 2024
Activity to be regulated	Employment Agencies, including recruitment agencies, temporary work agencies and outsourcing agencies.
Responsible entity	Department for Industrial and Employment Relations

2. Summary and background

2.1 Aims & Objectives of the legislation

In November 2023 the Employment Agencies Regulations were published. These regulations provide for a comprehensive framework for the oversight and operation of employment agencies and businesses in Malta, including those involved in recruitment for both domestic and international employment, temporary work, and outsourcing. These regulations emphasize stringent requirements for licensure, operational conduct and penalties for non-compliance.

These regulations entered into force on 1st April 2024. Upon the initial practical applicability of the said regulations and after consultations with all the entities concerned, it was felt that certain amendments were necessary for the optimal application of the mentioned regulations.

These amendments inter alia provide for vetting of applications by various public bodies, changes in the composition and remit of the Working Committee, and the removal of the prohibition of exclusivity agreements as regards employment agencies which focus solely on the recruitment and selection of workers without entering into an employment contract with the worker.

2.2 Importance of the regulations

These amendments are deemed necessary for optimal application of these regulations.

2.3 Public Consultation

The proposed amendments include feedback which was received from stakeholders, including employment agencies and from internal consultations and consultations which DIER had with other entities.

3. Overview of the structure of the instrument

The regulations consist of ten regulations as follows:

1. Title.

2. Amends regulation 2 of the principal regulations.

3. Amends regulation 3 of the principal regulations.

4. Amends regualtion 4 of the principal regulations.

5. Amends regulation 5 of the principal regulations.

6. Substitutes regulation 6 of the principal regulations.

7. Amends regulation 7 of the principal regulations.

8. Amends regulation 9 of the principal regulations.

9. Adds new regulation 9A of the principal regulations.

10. Amends the Second Schedule to the principal regulations.

4. Commentary on parts and regulations.

4.1 Amendment of regulation 2 of the principal regulations

New definitions for "Department", "full vetting process" and "Working Committee" were introduced.

4.2 Amendment of regulation 3 of the principal regulations

An amendment was also made to exclude the necessity of a licence for any employer who carries out any employment agency or employment business connected to any employment in such employer's own undertaking. This regulation was amended in order that the exclusivity clause does not apply in the case of employment agencies exclusively involved in recruitment services which focus solely on the recruitment and selection of workers, without entering into an employment contract or relationship with the worker.

4.3 Amendment of regulation 4 of the principal regulations

This regulation was amended to specify that all applications submitted prior to the entry into force of these amending regulations shall remain valid.

4.4 Amendment of regulation 5 of the principal regulations

This regulation was amended to include that applications shall be accompanied also with the following: (1) a sworn declaration by the applicant to the effect that he is not a person who at any time was found guilty, or is being interrogated and suspected, or has criminal charges brought against him other than an involuntaruy offence punishable with more than two years imprisonment;

(2) a recent original conduct certificate, which shall not be retained by the Director after the Director has examined it;

(3) a sworn declaration by the nominated competent person that he is not a person who at any time was found guilty, or at the time of application is being interrrogated and susupected, or has criminal charges brought against him for any criminal offence, other than an involuntary offence punishable with more than two years imprisonment.

(4) a recent conduct certificate in relation to the nominated competent person which shall not be retained by the Director after the Director has examined it.

4.5 Amendmenmt of regulation 6 of the principal regulations

This regulation was substituted and provides for where, after an initial assessment of the application for a licence or renewal thereof, the Director is of the opinion that further verifications are required, the applicant or the licensee for renewal shall be required to furnish the Director such due diligence reports from reputable third party operators as the Director may require and approve in the circumstances.

4.6 Amendment of Regulation 7 of the principal regulations

This regulation was amended in order that the Director would issue a licence upon the recommendation of the Working Committee for a period of two years.

4.7 Amendment of Regulation 9 of the principal regulations

This regulation was amended in order that the Director may refuse an application, or refuse renewal of an application, or revoke a licence upon the recommendation of the Working Committee. The Director may refuse an application, or refuse renewal of an application, or revoke a licence if he has acquired knowledge or evidence that the applicant or licensee, as the case may be, has knowingly continued to do business with any third party who has charged any fees or demanded any payment from applicants in exchange for employment services. This regulation was amended in order that full vetting be undertaken by any competent body which may include security verifications to be carried out by law enforcement authorities.

4.8 Introduction of new paragraph 9A to the principal regulations

A regulation was introduced which establishes the remit and composition of the Working Committee.

4.9 Amendments to Second Schedule of the principal regulations

The Second Schedule is being amended in order that the renewal of the licences be done every two years and the fee payable shall be €3000.

5. Concluding section

These regulations shall come into force upon publication in the Government Gazette.

NB. This Explanatory Note is not intended to be an exhaustive description of the instrument nor a substitute thereof or a legislative supplement to it. This Note does not purport to be an authoritative ruling on the interpretation of the legislation.

7th May, 2024