



Department
for Business
Innovation & Skills

Recruitment Sector

Consultation on reforming the
regulatory framework for the
recruitment sector and proposal
to prohibit EEA-only recruitment

OCTOBER 2015

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Consultation on reforming the regulatory framework for the recruitment sector and proposal to prohibit EEA-only recruitment

The recruitment sector is regulated by the Employment Agencies Act 1973 and the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (the 'Conduct Regulations'). In 2013, the Coalition Government consulted on proposed reforms to the legislation which would allow the recruitment sector greater freedom to fulfil its role in matching demand for jobs to demand for workers. The purpose of this consultation is to seek views on the specific amendments we propose to make to the Conduct Regulations.

We are also seeking views on a proposal to prohibit employment agencies and employment businesses from recruiting solely from other European Economic Area (EEA) countries without advertising in Great Britain and in English.

Issued: 13 October 2015

Respond by: 23 November 2015

Enquiries to:

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This consultation is mainly relevant to:

- Employment agencies and employment businesses
- Labour providers
- Hirers
- Work-seekers

Foreword from Nick Boles



The Government is committed to a labour market that is flexible, effective and fair. The flexibility of the UK's labour market allows people to move between jobs and allows businesses to respond quickly to changing demands.

The recruitment sector plays an important role in ensuring that the labour market works effectively by enabling people to find permanent and temporary work. However the legislation that regulates the sector is complicated and was identified as needing reform. In 2013 the Coalition Government consulted on proposed reforms to the legislation and received numerous helpful responses. We are now seeking views on the specific changes that we intend to make to the legislation. We believe the proposed changes strike a balance between removing some of the current burden on employment agencies and employment businesses, to encourage growth in this important sector, and retaining important protections for people who are looking for work.

We also believe it is important that workers in Britain are given the opportunity to apply for jobs that are based here. In January we made it illegal for employment agencies and employment businesses to advertise such jobs in other EEA countries without advertising them in Great Britain and in English. We now want to take this further by reducing the scope for employment agencies and employment businesses to fill vacancies here with people from overseas without any advertising.

Thank you in advance for taking the time to respond.

A handwritten signature in blue ink that reads "Nick Boles". The signature is fluid and cursive.

Nick Boles MP, Minister for Skills

Executive Summary

The recruitment sector plays an important role in the UK's labour market by improving the efficiency of matching demand for jobs to demand for workers. However, the legislation which regulates the sector was identified as needing reform and in 2013 the Coalition Government consulted on proposed reforms to the recruitment sector legislation.

The proposal was to focus on four outcomes to ensure that the sector could operate fairly and flexibly:

- Employment agencies and employment businesses are restricted from charging fees to work-seekers
- There is clarity on who is responsible for paying temporary workers for the work they have done
- The contracts people have with recruitment firms should not hinder their movement between jobs, and temp-to-perm transfer fees are reasonable
- Work-seekers have the confidence to use the sector and are able to assert their rights

In July 2013, after considering responses to the consultation, the Coalition Government published a response, setting out the intention to proceed with reforming the legislation. The purpose of consulting again now is to seek views on the specific amendments that we propose to make to the legislation, which will remove some of the burden from business, while continuing to protect people who are looking for work.

In addition, we are also seeking views on a proposal to ban employment agencies and employment businesses from recruiting solely from other EEA countries without advertising in Great Britain and in English. The proposal will only apply to employment agencies and employment businesses recruiting in other EEA countries, as those who want to recruit from outside of the EEA already need to comply with the Resident Labour Market Test.

The closing date for this consultation is Monday 23 November 2015.

1. How to respond

When responding, please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents by selecting the appropriate interest group on the consultation form and, where applicable, how the views of members were assembled.

You can reply to this consultation online at:

<https://bisgovuk.citizenspace.com/lm/recruitment-sector-regulations-reform>

The consultation response form is available electronically on the consultation page (until the consultation closes). The form can be submitted online/by email or by letter to:

Heather Beatson
Labour Market
Department for Business, Innovation and Skills
2 St Paul's Place
125 Norfolk Street
Sheffield
S1 2FJ

Email: recruitment.sector@bis.gsi.gov.uk

The closing date for this consultation is: Monday 23 November 2015.

You may make printed copies of this document without seeking permission.

The Consultation principles can be found in Annex B.

2. Confidentiality & Data Protection

Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want information, including personal data that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

3. Help with queries

Questions about the policy issues raised in the document can be addressed to:

Heather Beatson
Labour Market
Department for Business, Innovation and Skills
2 St Paul's Place
125 Norfolk Street
Sheffield
S1 2FJ

Email: recruitment.sector@bis.gsi.gov.uk

Tel: 020 7215 5000

4. Reforming the regulatory framework for the recruitment sector

Background

1. The recruitment sector is regulated by the Employment Agencies Act 1973 and the Conduct of Employment Agencies and Employment Regulations 2003 (the 'Conduct Regulations'). The sector has two legally defined types of service, employment agencies which introduce people to be employed by the hirer directly and employment businesses which employ or engage people to work under the supervision of another person.
2. The legislation provides a framework for contracts between employment agencies/employment businesses, hirers and work seekers. It also covers principles such as restrictions on fee-charging and ensuring that temporary workers are paid for the work they have done. The legislation covers all employment agencies and employment businesses in England, Scotland and Wales with the exception of those that are governed by the Gangmasters Licensing Authority (GLA).
3. The Conduct Regulations are enforced by the Employment Agency Standards Inspectorate (EAS). EAS respond to complaints received via the Acas Helpline and also carry out targeted enforcement in high risk areas in order to protect the most vulnerable agency workers. In line with the Regulator's Code, EAS focuses its work on encouraging and promoting compliance.
4. Criminal penalties do, however, exist within the Employment Agencies Act and a successful prosecution may lead to unlimited fines in a Magistrate's Court or a Crown Court. There is also a provision within the Employment Agencies Act to apply for a Prohibition Order which prevents an individual or individuals from running or being involved in the running of an agency for up to 10 years. Prosecutions and prohibitions are only pursued in cases of sustained and wilful non-compliance.
5. Northern Ireland has its own version of the Conduct Regulations and its own Employment Agency Inspectorate.
6. From January to April 2013 the Coalition Government consulted on proposals to reform the recruitment sector legislation, to remove burdensome legislation where possible, and give employment agencies and employment businesses greater freedom in the way they work. We also consulted on whether the Government should continue to enforce the legislation or whether individuals should be able to enforce their own rights at employment tribunals.
7. Following consideration of responses to the consultation, the Coalition Government published a Government response on 13 July 2013 confirming that the reformed regulations would continue to:
 - Prohibit employment agencies and employment businesses from charging fees to work-seekers – with exemptions for certain circumstances in the entertainment and modelling sectors as in the current legislation
 - Ensure that employment businesses do not withhold payment from temporary workers

- Ensure that where more than one business works together to supply a temporary worker to a hirer there is clarity on who is responsible for paying the temporary worker
- Prevent an employment agency or employment businesses from penalising workers for terminating or giving notice to terminate a contract
- Prevent employment businesses from enforcing unreasonable terms on a hirer when a temporary worker takes up permanent employment with that hirer
- Ensure that employment agencies and employment businesses keep sufficient records

Proposal

8. The purpose of this consultation is to seek views on proposed specific amendments to the Conduct Regulations. Our intention is to retain regulations which provide protection for work-seekers. However, we are proposing to remove business-to-business regulation and simplify the legislation where possible. Details of the changes are set out below.

Removal of restriction on employment agencies and employment businesses purporting to act on a different basis (regulation 9)

9. Regulation 9 currently prevents employment agencies and employment businesses from purporting to act on a different basis e.g. purporting to the work-seeker to be acting as an agency and purporting to the hirer to be acting as an employment business or vice versa. However, there is little evidence that this is an issue and therefore we are proposing to remove this regulation.

Removal of prohibition on entering into a contract on behalf of a client (regulation 11)

10. Regulation 11 applies to all employment agencies and employment businesses but is mainly relevant to those operating in the entertainment and modelling sector. We are proposing to remove the regulation as we do not consider its omission will affect many employment agencies or employment businesses and we consider that there are sufficient provisions in place in regulation 16 (requirement to agree terms with work-seekers and content of terms with work-seekers) to protect work-seekers in sectors where it is permitted to charge a fee.

Removal of requirement for employment businesses to obtain agreement to terms with hirers (regulation 17)

11. We are proposing that the requirement for employment businesses to obtain agreement to terms with hirers (regulation 17) should be removed from the Conduct Regulations. Although it is important for employment businesses to agree terms with hirers, we believe that this is a business-to-business arrangement and the two parties should have more flexibility when agreeing terms. We also believe it is disproportionate to impose a criminal liability on employment businesses for providing services to a hirer without agreeing terms with that hirer.

Situations where more than one agency or employment business is involved (regulation 23)

12. We are proposing to remove the provisions in regulation 23 (1) (a) and (b) which require an employment agency/employment business to ascertain that any other agency/employment business they enter into a contract with is suitable to act in that capacity, and the requirement to agree in what capacity each of them will act. However we are proposing to retain most of regulation 23 as it helps to fulfil part of one of our key objectives as it ensures:
- a) There is clarity on who is responsible for paying a work-seeker when an agency permitted by regulation 26(1) to charge for work-finding services, enters into a contract or arrangement with another agency to provide or facilitate the provision of services in relation to that work-seeker.
 - b) That neither an agency nor an employment business may assign or sub-contract any of its obligations under any contract or arrangement with a work-seeker, or hirer to another agency or employment business, unless they have obtained prior consent from the work-seeker and agreed the terms of that arrangement.
13. Technically, regulation 23(1) currently applies when an agency permitted to charge for work-finding services agrees with an employment business to supply a work-seeker to a client. If amended in line with our proposals, regulation 23(1) will have no mention of employment businesses at all. Employment businesses are not widely used in Great Britain in the sectors where fees may be charged to work seekers. If an agency in this sector does use an employment business to supply a work-seeker, regulation 12 should ensure timely payment for the worker.

Advertising (regulations 27 and 27A)

14. We are proposing to remove regulation 27 which requires employment agencies and employment businesses to ensure that advertisements for vacancies contain certain specified information. We believe that this will allow employment agencies and employment businesses to decide what information is necessary to attract candidates to vacancies. We are also removing the definition of 'advertisement' from regulation 2.
15. We are retaining Regulation 27A which prevents employment agencies and employment businesses advertising jobs solely in other EEA countries without advertising them in Great Britain and in English. We are proposing to extend this regulation by reducing the scope for employment agencies and employment businesses to fill vacancies here with people from overseas without advertising them. Details of this proposal can be found in section 6 of this consultation.

Schedules 4, 5 and 6

16. We are proposing to amend schedules 4 and 5 which would remove some of the requirement on employment agencies and employment businesses to include certain particulars in their records relating to work-seekers and hirers. We are also proposing to revoke schedule 6, which sets out the particulars to be included in records relating to other agencies or employment businesses.

Job boards

17. In the Government response to the 2013 consultation the Coalition Government said that they would amend the current definition of 'employment agency' to remove job boards from the scope of the legislation. The aim of this was to remove some business models from the scope of the legislation if they were simply providing a 'platform' for hirers advertising vacancies, or individuals advertising themselves as available for work. It was not our intention to remove businesses that provide a 'matching' service from the scope of the legislation, as we consider that this would be classed as work-finding as set out in the current definition of 'employment agency'.
18. Having considered this issue further, we have decided not to proceed with the proposal to remove 'job boards' from the scope of the legislation. The reason for this decision is that we understand that the majority of business models rely on some form of search function to allow a work-seeker to narrow their criteria when looking for a job. We consider that these search functions could be classed as 'work-finding' under the current legislation. We believe that it would be difficult to define in legislation what types of search engines are in scope of the Employment Agencies Act and the Conduct Regulations and which are not. An inadequate definition could result in recruiters who operate online being subject to less regulation than agencies with a physical presence, and who carry out the same functions. Even if such a definition was possible, it could create unnecessary confusion for businesses and individuals, and may make consistent enforcement difficult.

Enforcement

19. The Government is not proposing to make any changes to the existing enforcement powers and penalties set out in the Employment Agencies Act 1973.
20. EAS resource was doubled in 2014/15 and has been increased again for the financial year 2015/16, bringing the number of EAS inspectors to nine. The additional resource is being used for targeted enforcement in high risk sectors and locations in order to protect the most vulnerable agency workers.
21. On 1 September 2015 the Government announced that a Director of Labour Market Enforcement and Exploitation will be created to oversee enforcement of the National Minimum Wage, Employment Agency Standards and the Gangmasters Licensing Authority (a non-departmental public body of the Home Office). The Director will set priorities for enforcement based on a single view of the intelligence about exploitation and non-compliance.

Consequential amendments

22. The proposed amendments to the Conduct Regulations, if taken forward, will mean that consequential amendments are needed to the Merchant Shipping (Maritime Labour Convention) (Recruitment and Placement) Regulations 2014 (S.I. 2014/1615) ('the Merchant Shipping (MLC) (R&P) Regulations'). These amendments will likely cover amendment to regulation 7 of the Merchant Shipping (MLC) (R&P) Regulations to remove references to Schedules 4, 5 and 6 of the Conduct Regulations. The particulars specified in Schedules 4 and 5 will then be expressly included in the Merchant Shipping Regulations.

Impact Assessment

23. The Regulatory Policy Committee has confirmed that this deregulatory proposal is suitable for the fast track. The Department will provide an estimated equivalent annual net saving to business figure, along with supporting evidence, for validation at final stage.

5. Prohibiting employment agencies and employment businesses recruiting solely from other EEA countries

Background

24. On the 21 May, in his speech on immigration, the Prime Minister announced that the Government would ‘...*make it illegal for employment agencies to recruit solely from abroad without advertising those jobs in Britain and in English*’.
25. Regulation 27A of the Conduct Regulations, which came into force in January this year, already requires employment agencies and employment businesses in Great Britain, if they are advertising a vacancy for a job based here, to advertise it in GB and in English either before or at the same time as advertising it in another EEA country. We now want to take this further by amending regulation 27A so as to reduce the scope for employment agencies and employment businesses to fill vacancies in Great Britain with people from other EEA countries without any advertising.

Proposal

26. There is currently no requirement for employment agencies and employment businesses to advertise every job vacancy. We understand that vacancies often need to be filled at very short notice and employment agencies and employment businesses are able to fulfil this need by supplying work-seekers who are already on their books. Therefore we are not proposing that all job vacancies will need to be advertised in future. However, we are proposing that those employment agencies and employment businesses that recruit overseas, for work in Great Britain, would be required to advertise in Great Britain and in English, either at the same time or in the 28 days prior to any overseas recruitment activity. This would include advertising for specific vacancies (as now) and also generic recruitment campaigns.
27. Employment agencies and employment businesses would be in scope of the new regulation when they are acting in their capacity as employment agencies and employment businesses as defined by the Employment Agencies Act 1973 but not in their capacity as employers in their own right.
28. Universal Jobmatch (available via www.gov.uk) is the Government’s current job posting and matching service for employers, recruiters and jobseekers. Although employment agencies and employment businesses are not compelled to use the Government’s job posting service, those that choose to do so would be compliant with the proposed amendment to Regulation 27A.
29. It is proposed to keep the defence in the existing Regulation 27A with minor changes. This would mean that employment agencies and employment businesses would not have to advertise in English in Great Britain if they believed (on reasonable grounds) that doing so would be disproportionate. In other words, given how many more suitable candidates could be expected to see such advertising, this would not justify the additional work or expense of the advertising. An example might be where an employment agency is looking for translators from, say, English to German. In these cases, it would be disproportionate to require an internet advertisement in German to be translated. This defence is to avoid affecting recruitment arrangements that would comply with the Equality Act 2010.

Recruitment from outside of the EEA

30. As with the existing Regulation 27A, the proposed amendment will only apply to employment agencies and employment businesses recruiting in other EEA countries for work in Great Britain. Employers who want to recruit from outside of the EEA need to comply with the Resident Labour Market Test. This requires employers to advertise a position in two UK publications for 28 days and provide evidence to UK Visas and Immigration that this requirement was met and yielded no suitable candidate.
31. The only exemption to the Resident Labour Market Test is where a post is deemed a 'shortage occupation' for the UK. These roles, defined by the independent Migration Advisory Committee (MAC), are free to bypass the 28 day 'EEA only' period and offer their post globally from the initial date of advertisement.
32. The Government has commissioned the MAC to conduct a review of Tier 2 of the points-based immigration system (the visa route for non-EEA skilled workers).

Impact Assessment

33. The Regulatory Policy Committee has confirmed that this low-cost regulatory proposal is suitable for the fast track. The Department will provide an estimated equivalent annual net cost to business figure, along with supporting evidence, for validation at final stage.

6. Consultation questions

Definitions

- **Employment agencies** find work for work-seekers, to be employed and paid by employers not the agency.
- **Employment businesses** engage work-seekers under contract to then work under the supervision of another organisation. This is normally called ‘temporary agency work’ or ‘temping’. Workers under these arrangements are paid through the employment business rather than directly by the organisation they are supplied to.
- **Work-seekers** are the individuals who are contracted by the employment business or agency and are placed with a third party to carry out ‘temporary agency work’ or become an employee of that third party.
- **Hirers** are the organisations that contract with employment businesses and agencies to supply individuals to carry out work on their behalf or to find new employees.

Question 1)

- a) How do you think the removal of **Regulation 9** would affect employment agencies/employment businesses, work-seekers and hirers?

	Positively	No Impact	Negatively
Employment agencies/employment businesses			
Work-seekers			
Hirers			

- b) Please explain briefly what you think the impact would be

Question 2)

a) How do you think the removal of **Regulation 11** would affect employment agencies/employment businesses, work-seekers and hirers?

	Positively	No Impact	Negatively
Employment agencies/employment businesses			
Work-seekers			
Hirers			

b) Please explain briefly what you think the impact would be

Question 3)

a) How do you think the removal of **Regulation 17** would affect employment agencies/employment businesses, work-seekers and hirers?

	Positively	No Impact	Negatively
Employment agencies/employment businesses			
Work-seekers			
Hirers			

b) Please explain briefly what you think the impact would be.

Question 4)

a) How do you think the proposed amendment to **Regulation 23** would affect employment agencies/employment businesses, work-seekers and hirers?

	Positively	No Impact	Negatively
Employment agencies/employment businesses			
Work-seekers			
Hirers			

b) Please explain briefly what you think the impact would be.

Question 5)

a) How do you think the removal of **Regulation 27** would affect employment agencies/employment businesses, work-seekers and hirers?

	Positively	No Impact	Negatively
Employment agencies/employment businesses			
Work-seekers			
Hirers			

b) Please explain briefly what you think the impact would be.

Question 6)

- a) How do you think the proposed amendment to **Schedule 4** would affect employment agencies/employment businesses, work-seekers and hirers?

	Positively	No Impact	Negatively
Employment agencies/employment businesses			
Work-seekers			
Hirers			

- b) Please explain briefly what you think the impact would be.

Question 7)

- a) How do you think the proposed amendment to **Schedule 5** would affect employment agencies/employment businesses, work-seekers and hirers?

	Positively	No Impact	Negatively
Employment agencies/employment businesses			
Work-seekers			
Hirers			

- b) Please explain briefly what you think the impact would be.

Question 8)

- a) How do you think the removal of **Schedule 6** would affect employment agencies/employment businesses, work-seekers and hirers?

	Positively	No Impact	Negatively
Employment agencies/employment businesses			
Work-seekers			
Hirers			

- b) Please explain briefly what you think the impact would be.

Question 9)

- a) Do you agree with the decision not to remove 'job boards' from the scope of the legislation?

Yes/No

- b) If you answered no to the above question, how would you define 'job board'?

Question 10)

We are interested in the impact of the proposal to ban employment agencies and employment businesses from recruiting from overseas without advertising in Great Britain.

- a) How do you think the proposed ban would affect employment agencies/employment businesses, work-seekers and hirers?

	Positively	No Impact	Negatively
Employment agencies/employment businesses			
Work-seekers			
Hirers			

b) Please explain briefly what you think the impact would be.

Question 11)

a) Do you think the proposal to ban employment agencies and employment businesses recruiting from overseas without advertising in Great Britain would increase the number of job opportunities available to workers in Britain?

Yes/No

b) Please give reasons for your answer

Question 12)

a) Do you have any evidence of employment agencies and employment businesses recruiting solely from other EEA countries without advertising in Great Britain?

Yes/No

b) If yes, please provide details of the scale of this activity, including the sectors in which this takes place.

Question 13)

a) Do you have any evidence of employment agencies and employment businesses recruiting solely from non-EEA countries without advertising in Great Britain?

Yes/No

b) If yes, please provide details of the scale of this activity, including the sectors in which this takes place.

7. What happens next?

We will publish a Government response to the consultation within 12 weeks of the closing date.

Draft Regulations laid before Parliament under section 12(5) of the Employment Agencies Act 1973 and paragraph 2(2) of Schedule 2 to the European Communities Act 1972 for approval by resolution of each House of Parliament.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2015 No. 0000

EMPLOYMENT AGENCIES, ETC.

[The Conduct of Employment Agencies and Employment Businesses
(Amendment) Regulations 2016]

Made - - - - - ***

Coming into force - - - - - ***

The Secretary of State is a Minister designated (1) for the purposes of section 2(2) of the European Communities Act 1972(2) in relation to measures relating to maritime transport.

The Secretary of State, having consulted such bodies as appear to the Secretary of State representative of the interests concerned(3), makes the following Regulations, in exercise of powers conferred by sections 5(1) and 12(3) of the Employment Agencies Act 1973(4) and section 2(2) of the European Communities Act 1972.

A draft of these Regulations was laid before Parliament in accordance with section 12(5)(5) of the Employment Agencies Act 1973 and paragraph 2(2) of Schedule 2 to the European Communities Act 1972 and approved by a resolution of each House of Parliament.

Citation and commencement

—(1) These Regulations may be cited as [the Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2016].

(a) These Regulations come into force on [X].

Amendments to the Conduct of Employment Agencies and Employment Businesses Regulations 2003

—(2) The Conduct of Employment Agencies and Employment Businesses Regulations 2003(6) are amended as follows.

(b) In regulation 2 (interpretation) omit the definition of “advertisement”.

(c) Omit regulation 9 (restriction on agencies and employment businesses purporting to act on a different basis).

(d) Omit regulation 11 (entering into a contract on behalf of a client).

(1) S.I. 1994/757.

(2) 1972 c.68. Section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c.51) and by section 3 of, and Part I of the Schedule to, the European Union (Amendment) Act 2008 (c.7). The Maritime Labour Convention is regarded as one of the EU Treaties within the meaning of section 1(2) of the European Communities Act 1972 by virtue of the European Communities (Definition of Treaties) (Maritime Labour Convention) Order 2009 (S.I. 2009/1757, as amended by S.I. 2011/1043).

(3) Section 12(2) of the Employment Agencies Act 1973 requires the Secretary of State to consult with representative bodies before making Regulations under that Act.

(4) 1973 c.35. Section 5(1) was amended by the Employment Relations Act 1999 (c.26), section 31 and Schedule 7, paragraphs 1 and 2.

(5) Section 12(5) was substituted by the Employment Relations Act 1999, section 31 and Schedule 7, paragraphs 1 and 6.

(6) S.I. 2003/3319; relevant amending instruments are: S.I. 2007/3575, S.I. 2010/1782 and S.I. 2014/3351.

(e) In paragraph (1)(b) of regulation 16 (requirement to obtain agreement to terms with work-seekers and content of terms with work-seekers: agencies) omit “(in accordance with regulation 11)”.

(f) Omit regulation 17 (requirement for employment businesses to obtain agreement to terms with hirers).

(g) For paragraph (1) of regulation 23 (situations where more than one agency or employment business is involved) substitute—

“(1) An agency (“A”) acting for a work-seeker whom it is permitted by regulation 26(1) to charge for work-finding services may not enter into any contract or arrangement with another agency (“B”) with a view to B providing or facilitating the provision of such services in relation to the work-seeker unless—

- (a) A has ensured that the hirer has been informed that any payment due to the work-seeker must be paid either directly to the work-seeker, or to A, rather than to B; or
- (b) where A and B have agreed that B may receive any payment due to the work-seeker—
 - (i) they have agreed that B shall pass the monies to A or to the work-seeker within 10 days of receipt by B of the same; and
 - (ii) provided that the applicable law of the agreement between A and B does not prevent it, they have agreed that the work-seeker may enforce the term referred to in sub-paragraph (b)(i) in the event that B fails to pass the monies to A or the work-seeker within the 10 day period referred to therein; and
 - (iii) the terms of the agreement reached between A and B in accordance with sub-paragraphs (b)(i) and (ii) are recorded in paper form or by electronic means.”

(h) Omit regulation 27 (advertisements).

(i) For regulation 27A substitute—

“Advertising in other EEA states

27A.—(1) An agency or employment business must not publish relevant recruitment advertising in an EEA state other than the United Kingdom unless—

- (a) it publishes the advertising in English in Great Britain at the same time as it publishes the advertising in the other EEA state; or
- (b) it has published the advertising in English in Great Britain for all or part of the period of 28 days ending with the day on which it publishes the advertising in the other EEA state.

(2) Paragraph (1) does not apply if the relevant recruitment advertising concerns a vacancy for a worker to act solely for, and under the control of, the agency or employment business itself.

(3) It is a defence in any proceedings under—

- (a) section 5(2) of the Act⁽⁷⁾, or
- (b) regulation 30,

in respect of a contravention of paragraph (1) that the agency or employment business believes, on reasonable grounds, that publishing the relevant recruitment advertising in English in Great Britain would be disproportionate having regard to the likelihood that doing so would bring the advertising to the attention of a person with the skills sought by the agency or employment business.

(4) For the purposes of this regulation—

- (a) “publish” means make, or cause to be made, available to the public or a section of the public,
- (b) advertising on a website is taken to be advertising in all places from which the website can be accessed,
- (c) “relevant recruitment advertising” means either—
 - (i) advertising in respect of a particular vacant position the duties of which are ordinarily to be performed in Great Britain, or
 - (ii) advertising by which an agency or employment business seeks to identify worker-seekers who are looking for a position the duties of which are ordinarily to be performed in Great Britain.”

(j) In paragraph (1) of regulation 29 (records)—

(7) Section 5(2) was amended by the Employment Act 2008 (c.24), section 15.

insert “and” at the end of sub-paragraph (a);

omit “and” at the end of sub-paragraph (b);

omit sub-paragraph (c).

(k) In Schedule 4 (particulars to be included in an agency’s or employment business’s records relating to work-seekers) omit paragraphs 1, 5, and 9.

(l) In Schedule 5 (particulars to be included in an agency’s or employment business’s records relating to hirers) omit paragraphs 1, 2, 6, 7, 8 and 10.

(m) Omit Schedule 6 (particulars to be included in an agency’s or employment business’s records relating to other agencies or employment businesses).

Amendments to the Merchant Shipping (Maritime Labour Convention) (Recruitment and Placement) Regulations 2014

—(3) The Merchant Shipping (Maritime Labour Convention) (Recruitment and Placement) Regulations 2014⁽⁸⁾ are amended as follows.

(n) For regulation 7 (duty on employment agencies and businesses to maintain records) substitute—

“Duty on employment agencies and businesses to maintain records

7.—(1) Subject to paragraph (5), every employment agency and employment business must keep records which are sufficient to show whether the provisions of these Regulations are being complied with, including the particulars specified in paragraphs (2) and (3).

(2) The particulars to be included in relation to every application received by the employment agency or employment business from a work-seeker are—

- (a) date application received;
- (b) work-seeker’s name, address and, if under 22, date of birth;
- (c) any terms which apply or will apply between the employment agency or employment business and the work-seeker, and any document recording any variation of the terms;
- (d) details of the work-seeker’s training, experience, qualifications, and any authorisation to undertake particular work (and copies of any documentary evidence of the same obtained by the employment agency or employment business);
- (e) details of any requirements specified by the work-seeker in relation to taking up employment;
- (f) names of hirers to whom the work-seeker is introduced or supplied;
- (g) details of any resulting engagement and date from which it takes effect;
- (h) copy of any contract between the work-seeker and any hirer entered into by the employment agency on the work-seeker’s behalf;
- (i) date application withdrawn or contract terminated (where applicable);
- (j) in the case of an employment agency that is permitted by the Conduct Regulations to charge fees to work-seekers, dates of requests by the employment agency for fees from the work-seeker and of receipt of such fees, with copy statements or invoices, numbers and amounts; or, as appropriate, statements of dates and amounts of sums deducted from money received by the employment agency on the work-seeker’s behalf in accordance with regulation 25 of the Conduct Regulations, to the extent that these are not required to be comprised in records maintained in respect of a client account in accordance with paragraph 12 of Schedule 2 to the Conduct Regulations;
- (k) details of enquiries made under regulation 4 about the work-seeker and the position concerned with copies of all relevant documents and dates they were received or sent as the case may be.

(3) The particulars to be included in relation to every application received by the employment agency or employment business from a hirer are—

- (a) date application received;

⁽⁸⁾ S.I. 2014/1615.

- (b) hirer's name and address, and location of employment;
- (c) details of the position(s) the hirer seeks to fill;
- (d) duration or likely duration of work;
- (e) experience, training, ability, qualifications, and authorisation required by the hirer, by law, or by any professional body; and any other conditions attaching to the position(s) the hirer seeks to fill;
- (f) the terms offered in respect of the position(s) the hirer seeks to fill;
- (g) copy of the terms between the employment agency or employment business and the hirer, and any document recording any variation of the terms;
- (h) names of work-seekers introduced or supplied;
- (i) details of each resulting engagement and date from which it takes effect;
- (j) dates of requests by the employment agency or employment business for fees or other payment from the hirer and of receipt of such fees or other payments, and copies of statements or invoices.

(4) The records mentioned in paragraph (1) must be kept—

- (a) for a period of at least one year starting on the date of their creation; and
- (b) for a period of at least one year starting on the date on which the employment agency or employment business last provided services in the course of its business as an employment agency or an employment business to the applicant to whom they relate.

(5) The obligation to keep records of the particulars referred to in paragraph (1) does not apply to applications in respect of which the employment agency or employment business takes no action.

(6) The records mentioned in paragraph (1) must be kept by an employment agency or employment business either—

- (a) at any premises it uses for or in connection with the carrying on of an employment agency or employment business; or
- (b) at another location where the records are readily accessible by it.

(7) The records an employment agency or employment business is required to keep pursuant to this regulation may be kept in electronic form, provided that the information so recorded is capable of being reproduced in legible form.”

(o) In paragraph (1) of regulation 8 (offences) for “7(1), (2) or (5)” substitute “7(1), (4) or (6)”.

Name

Minister of State for Skills

Department of Business, Innovation and Skills

Date

Annex B: Consultation principles

The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles.

<http://www.cabinetoffice.gov.uk/sites/default/files/resources/Consultation-Principles.pdf>

Comments or complaints on the conduct of this consultation

If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to:

Angela Rabess
BIS Consultation Co-ordinator,
1 Victoria Street,
London
SW1H 0ET

Telephone Angela on 020 7215 1661
or e-mail to: angela.rabess@bis.gsi.gov.uk

However if you wish to comment on the specific policy proposals you should contact the policy lead (see section 4).

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