



Department
for Business
Innovation & Skills

**Consultation on prohibiting
employment agencies and
employment businesses from
advertising jobs exclusively in other
EEA countries**

Impact Assessment

JULY 2014

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Title: Prohibiting employment agencies and employment businesses from recruiting exclusively in other EEA countries: consultation IA No: BIS 0401 Lead department or agency: BIS Other departments or agencies:	Impact Assessment (IA)				
	Date:				
	Stage: Consultation				
	Source of intervention: Domestic				
	Type of measure: Secondary legislation				
Contact for enquiries: Ivan Bishop Ivan.bishop@bis.gsi.gov.uk BIS, Abbey 3.1, 1 Victoria Street, London, SW1H 0ET					
Summary: Intervention and Options					RPC Opinion: Awaiting Scrutiny

Cost of Preferred (or more likely) Option						
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2013 prices)	In scope of One-In, One-Out?	Measure qualifies as		
£m -0.08	£m -0.08	£m 0.01	Yes	In		
What is the problem under consideration? Why is Government intervention necessary? The recruitment sector is regulated by the Employment Agencies Act 1973 and the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (both as amended). The current recruitment sector legislation does not regulate where job vacancies are advertised. This means that some employment agencies and employment businesses may be advertising vacancies in other EEA countries without giving workers in Britain the opportunity to apply.						
What are the policy objectives and the intended effects <ol style="list-style-type: none"> To create a level playing field for work-seekers by ensuring that employment agencies and employment businesses advertise all job vacancies in Great Britain. To expand the range of job opportunities open to people in Great Britain and also expand the range of people that businesses can choose from. 						
What policy options have been considered, including any alternatives to regulation? Only preferred options have been given (where one exists), see Evidence Base for full information <ol style="list-style-type: none"> No change option The preferred option: Introduce a new regulation which prohibits employment agencies and employment businesses from advertising jobs exclusively overseas. 						
Will the policy be reviewed? Yes, in 2020						
Does implementation go beyond minimum EU requirements?			Yes			
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		Micro Yes	< 20 Yes	Small Yes	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? N?A			Traded: -	Non-traded: -		

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister: _____ Date: _____ 4

Summary sheets of Costs and Benefits

This next section summarises the costs and benefits associated with each option. Note that “do nothing” options are not summarised as their costs and benefits are the benchmark from which the other options are measured from.

Summary: Analysis & Evidence

Policy Option 2

Description: **Requiring employment businesses and agencies to advertise to people in Britain placements located in Great Britain**

Price Base Year 2013	PV Base Year 2015	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: n/a	High: n/a	Best Estimate: -0.08

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	n/a	n/a	n/a
High	n/a	n/a	n/a
Best Estimate	0.1	0	0.1

Description and scale of key monetised costs by 'main affected groups'

We estimate that there will be familiarisation costs to employment businesses and agencies of £0.08 million, primarily involving those not affected by the proposed regulation establishing that that is the case.

Other key non-monetised costs by 'main affected groups'

There would be costs involved for affected recruitment firms as they would have to place advertisements for people in the UK (which we expect to be slight). There may be slight costs if affected firms need to revise their recruitment processes to cover English speakers.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	n/a	n/a	n/a
High	n/a	n/a	n/a
Best Estimate	n/a	n/a	n/a

Description and scale of key monetised benefits by 'main affected groups'

N/A

Other key non-monetised benefits by 'main affected groups'

As the proposed regulation would remove a potential restriction from the labour market, by requiring that advertisements for placements located in Great Britain are advertised to people in Britain, there are potential benefits from a wider choice of jobs for people in Britain, and a wider range of candidates for hirers.

Key assumptions/sensitivities/risks

Discount rate (%)

3.5

We expect there to be very few recruitment firms placing adverts exclusively overseas for jobs located in Great Britain.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of	Measure qualifies
Costs: 0	Benefits: 0	Net: 0	Yes	In

References

Include the links to relevant legislation and publications, such as public impact assessments of earlier stages (e.g. Consultation, Final, Enactment) and those of the matching IN or OUTs measures.

No. Legislation or publication

- 1 Employment Agencies Act 1973,
http://www.legislation.gov.uk/ukpga/1973/35/pdfs/ukpga_19730035_en.pdf
- 2 The Conduct of Employment Agencies and Businesses Regulations 2003
http://www.legislation.gov.uk/uksi/2003/3319/pdfs/uksi_20033319_en.pdf
- 3 The Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2010
http://www.legislation.gov.uk/ukdsi/2010/9780111497326/pdfs/ukdsi_9780111497326_en.pdf
- 4 Terms and Conditions of Employment, the Agency Workers Regulations 2010
http://www.legislation.gov.uk/uksi/2010/93/pdfs/uksi_20100093_en.pdf

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Evidence Base

Problem under consideration

- 1) The United Kingdom has one of the most lightly regulated labour markets in the developed world, fourth to New Zealand, the US and Canada for permanent employees and third to Canada and the US on temporary contracts¹. The flexibility of the UK's labour market allows people to easily move between jobs and allows businesses to quickly respond to changing demands. The Government is committed to ensuring that employment law supports and maintains the UK's flexible labour market.
- 2) The recruitment sector plays an important role in ensuring the UK's labour market works effectively by improving the efficiency of matching demand for jobs to demand for workers. It places approximately 1.7 million people into work each year². The recruitment sector is regulated by the Employment Agencies Act 1973³ and the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (the "Conduct Regulations")⁴. The Act and the regulations govern the tripartite relationship between an employment agency/employment business, a hirer and a work-seeker. They seek to ensure that work-seekers, those looking for either permanent or temporary work, generally have free access to the labour market, are able to move within the labour market, and can use the recruitment sector with confidence. These regulations are enforced by the Employment Agencies Standards Inspectorate (EAS), ultimately through the use of criminal sanctions, although prosecutions are rare.
- 3) The Conduct Regulations do not currently regulate where job vacancies are advertised. This means that some employment agencies and employment businesses may be advertising vacancies in other EEA countries without giving workers in Britain the opportunity to apply.

Background

- 4) The recruitment sector is an important part of our economy, contributing over £25 billion in 2012⁵. In 2013, there were around 18,200 employment agencies and employment businesses⁶ within the recruitment sector. Slightly under sixty per cent of

¹ OECD (2013) "Protecting jobs, enhancing flexibility: A new look at employment protection legislation" in OECD Employment Outlook 2013, OECD publishing http://dx.doi.org/10.1787/emp_outlook-2013-6-en

² The Recruitment and Employment Confederation's Industry Trends Survey 2012/13

³ Employment Agencies Act 1973,

http://www.legislation.gov.uk/ukpga/1973/35/pdfs/ukpga_19730035_en.pdf

⁴ The Conduct of Employment Agencies and Businesses Regulations 2003

http://www.legislation.gov.uk/uksi/2003/3319/pdfs/uksi_20033319_en.pdf

⁵ ONS Annual business Survey 2012. In comparison, according to the same source, the manufacture of transport equipment (including motor vehicles and aerospace manufacture) contributed around £20.5bn in 2012, while telecommunications contributed around £26 bn.

⁶ ONS, UK Business: Activity, size and location 2013. The official Standard Industrial Classification places businesses within industries on the basis of their primary activity. These figures relate to the number of enterprises that are

these (10,690) were primarily employment businesses, supplying hirers with workers on a temporary basis (Table 1). While most firms in the recruitment sector are micro businesses, the proportion accounted for by micros is lower than in the economy as a whole.

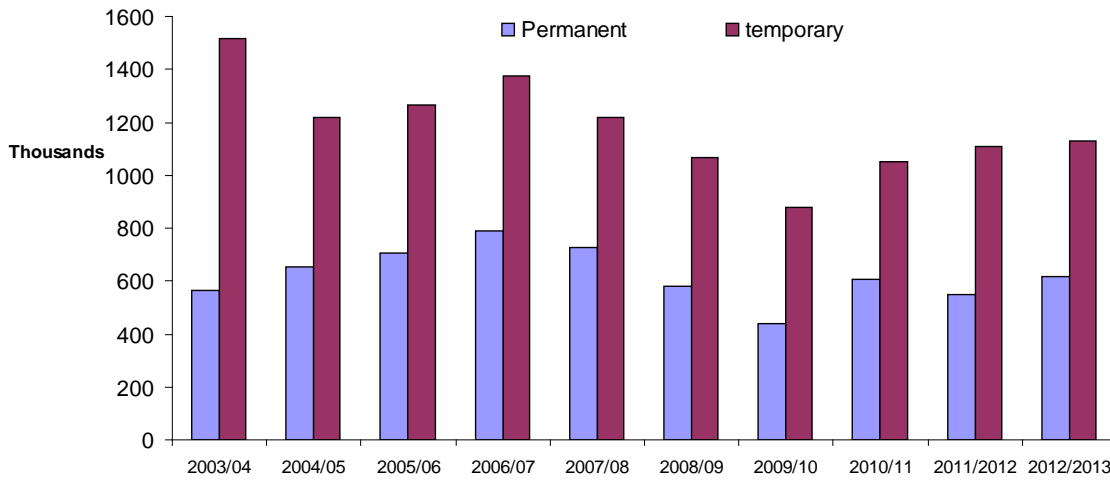
Table 1: Recruitment businesses by size, 2013 ONS data

Type of business	Firm size (number of employees)				Total
	Micro (0-9)	Small (10-49)	Medium (50-249)	Large (250+)	
employment agencies	6,185	925	325	55	7,490
	83%	12%	4%	1%	100%
employment businesses	7,170	2,095	1,100	325	10,690
	67%	20%	10%	3%	100%
whole economy	1,912,450	209,710	36,505	8,915	2,167,850
	88%	10%	2%	0%	100%

- 5) Around 1.7 million people are placed into work by the recruitment sector each year. In 2012/13 there were around 617,000 permanent placements, up 12% from the previous year. Temporary placements also rose by 2% to 1,128,000 in 2012/13 (Figure 1). These permanent placements and temporary placements represented 2.1% and 3.8% respectively of total employment in the UK in 2012/13.

registered for VAT and/or PAYE, and rounded to the nearest 5. There are two legally defined types of business models in the sector; *employment agencies* who introduce people to hirers for permanent employment; and *employment businesses* (also known as temping agencies) who introduce people to hirers for temporary work. Many recruitment businesses operate as both employment agencies and employment businesses.

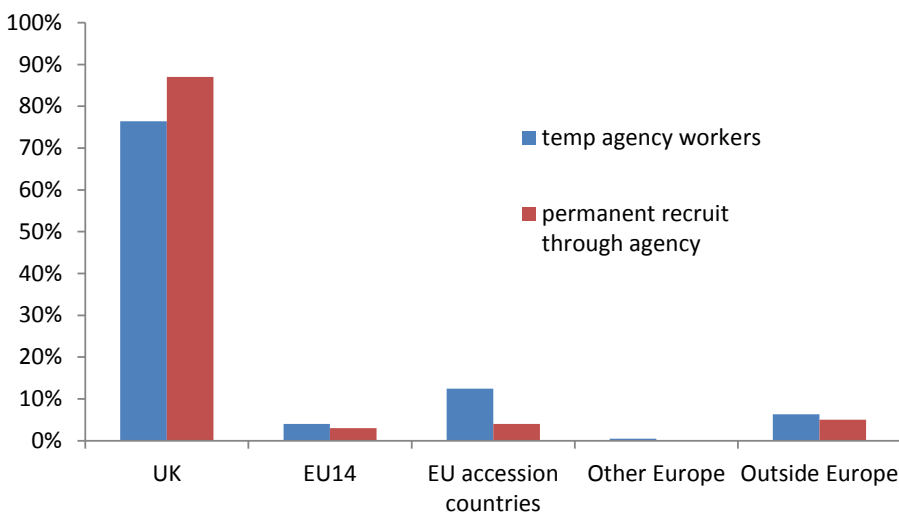
Figure 1: People placed into work by the recruitment sector



Source: Recruitment and Employment Confederation Recruitment Industry Trends

- 6) The sector supplies workers for a wide range of jobs, ranging from the highly skilled (e.g. IT) to the very low paid and low skilled. Temp workers in these low skilled occupations have been identified by the Low Pay Commission (LPC) as being vulnerable to exploitation e.g. social care and the hotel and cleaning industry⁷.
- 7) Evidence from the Labour Force Survey for the 4th quarter of 2013 suggests that the majority of temporary agency workers, and those recruited through employment agencies into permanent posts in the year prior to the survey, were of UK nationality. However, over 12% of temporary agency workers came from EU accession countries. However, individuals of UK or other nationality may have found their work while in the UK.

Figure 2: Temporary agency workers and recruits in the prior year to permanent posts via employment agencies, by nationality (per cent, 4th quarter 2013).



⁷ National Minimum Wage: Low Pay Commission Report 2010, March 2010, p99 and 179-180.

Rationale for intervention

- 8) The legislation does not currently regulate where employment agencies and employment businesses place advertisements for vacancies. This means that some employment agencies and employment businesses may be advertising vacancies overseas without giving workers in Britain the opportunity to apply. This impacts on the equity of the labour market, by limiting some jobs in Great Britain to job-seekers from other EEA countries. It also undermines the effectiveness of the labour market by unnecessarily reducing the job choices available to individuals in Great Britain, and unnecessarily limiting the choice of candidates the hiring business will have to choose from. It may potentially be a breach of the Equality Act 2010 for recruitment firms to not advertise placements in Great Britain to individuals in Britain. This proposed regulation will bring certainty to this issue.

Policy Objective

- 9) The Government wants to create a level playing field for workers by requiring employment agencies and employment businesses to ensure that all job vacancies are advertised in Great Britain and in English. We believe this will expand the range of job opportunities open to people in Great Britain and will also expand the range of people that businesses can choose from.

Description of Policy Option

- 10) We are consulting on a new regulation which would prohibit employment agencies and employment businesses from advertising jobs exclusively in other EEA countries. This is in response to concerns raised during debates in the House of Commons Public Bill Committee for the Immigration Bill that some agencies may be discriminating against UK workers by sourcing labour exclusively from other EEA member states. The proposed regulation would not ban employment agencies/businesses from advertising jobs in other EEA countries but would require them to ensure that all jobs are advertised simultaneously in GB, and in English. The regulation would only cover employment agencies and employment businesses that are based in GB or where there is some presence in GB⁸.
- 11) Overseas-only recruitment is already potentially a breach of section 39 of the Equality Act 2010 which makes it unlawful for an employer to discriminate in the arrangements made to recruit to a post. However, the proposed regulation would make it very clear to those employment agencies and employment businesses that place advertisements in other EEA countries that vacancies must also be advertised in GB.

⁸ Northern Ireland has its own regulatory framework for the recruitment sector.

The main stakeholders

12) The main stakeholders affected by the proposed changes to the recruitment sector regulations are:

- The recruitment sector
 - i) Employment businesses
 - ii) Employment agencies
- Labour providers
- Work-seekers
 - i) Temporary agency workers
 - ii) Work-seekers looking for permanent employment

Policy option costs and benefits

- 13) This Impact Assessment identifies both monetised and non-monetised impacts on businesses, work-seekers and the Exchequer in the UK, with the aim of understanding what the overall impact to society might be from implementing these options. The costs and benefits of the proposed option are compared to the no change option. Where possible, the estimated costs and benefits have been monetised, but it is not possible to monetise all of the potential impacts.
- 14) **Option 1:** The no change option, providing the baseline against which the other proposals are compared against. Therefore, in monetising the costs and benefits (as it is compared against itself) its costs and benefits are necessarily zero, as is its Net Present Value.
- 15) **Option 2:** The Government proposal to regulate to ensure a level playing field for workers in GB by prohibiting employment agencies and employment businesses from advertising jobs exclusively overseas.

Assumptions

- 16) We have little evidence that many employment businesses or agencies only advertise overseas in the EU for jobs in Great Britain. A small number of recruitment firms (six) we referred to as potentially doing so in a meeting of the Parliamentary Public Bill Committee discussing the Immigration Bill on 19th November 2013⁹.
- 17) We assume that employment businesses and agencies will already need mechanisms to advertise placements, with most having websites. All of the businesses referred to in the Public Bill Committee discussion referred to above had a website. The new regulation would only require the recruitment firm to advertise the placement to people in Great Britain. Businesses likely to be affected would be in a position to post adverts in English on their website.

Transition costs – ensuring posts advertised in the UK

- 18) The explicit inclusion of a requirement for GB employment businesses and agencies to advertise jobs or assignments in GB is not expected to impact on transition costs. The Equality Act 2010 already potentially requires recruitment firms to do this. Also, there is little evidence available on whether any firms advertise GB jobs exclusively outside the Britain and it is likely that at most only a very small minority of recruitment firms would do so. We will request information on the extent that this practice takes place in the consultation.

⁹ Public Bill Committee, Immigration Bill, Parliament, 19th November 2013
<http://www.publications.parliament.uk/pa/cm201314/cmpublic/immigration/131119/am/131119s01.htm> (accessed 25/07/2014)

Familiarisation costs

19) We would expect the familiarisation costs for recruitment firms to be marginal. Most will be aware that they do advertise all British placements to people in Britain, so will be able to assess the new regulation rapidly to know that it would not affect them. Assuming around 10 minutes of an HR manager or director's time, as the regulation is straightforward, we estimate the following cost. The Annual Survey of Hours and Earnings shows that the median hourly wage excluding overtime for an HR manager or director is £23. Uprated by a Eurostat estimate of non-wage labour costs as a proportion of wages, at 17.8%, and we get an hourly labour cost of £27. There are an estimated 18,180 employment businesses or agencies. Multiplying this number by the hourly rate by a sixth and we get £82,000. If we assume that less than ten recruitment firms are affected by the regulation, and their familiarisation would take one hour of an HR manager or director's time, this would be well under £1,000.

Ongoing Costs and benefits

Ongoing Costs: Business

20) The very limited information available suggests that at most very few recruitment firms exclusively advertise GB jobs to individuals outside the UK. Recruitment firms that do advertise overseas will generally have websites (This is suggested by the Committee stage debate on their Immigration Bill). To comply with this aspect of the reform, firms would have to place adverts in English on their websites. However, it is possible that the recruitment firm will have an available version of the advert in English – as the hirer may well be British. Because of the lack of information available, we have not monetised this cost. However, we would expect any cost to be small, primarily due to the small number at most of employment businesses and agencies potentially affected. We will use the consultation to gather more evidence.

Ongoing costs: work-seekers

21) We are not expecting any costs to work-seekers.

Ongoing benefits to business

22) As noted above, there may be a small benefit to hirers resulting from a widening of the pool of potential applicants for posts not previously advertised in Great Britain to individuals in Britain. We expect the impact will be small, as we expect that few recruitment firms have solely advertised posts located in Great Britain in other EEA countries. We have not attempted to monetise these potential benefits.

Ongoing benefits to work-seekers

23) There may be a marginal benefit to GB work-seekers if some GB jobs, previously only advertised overseas, were also advertised in GB. We have not attempted to monetise these benefits.

Sensitivities

- 24) There is limited information about the extent of the practice of employment businesses or agencies advertising placements in Great Britain solely in other EEA countries. The available evidence suggests that the practice isn't widespread, but the regulatory cost may be higher if many more firms were involved. However, as the Equality Act 2010 already potentially requires such placements to be advertised to people in the UK, we do not expect many recruitment firms to be affected. We will request information about the extent of the practice in the consultation.
- 25) We haven't assessed whether affected employment businesses or agencies would face additional costs because they would need to develop their recruitment processes to cater for English-speaking workers. The regulation does not require the firms to recruit from people in Britain, but it is also likely that the recruitment firms would be able to carry out processes in both English and (an)other relevant EU language(s) – as potential hirers may be English speakers.

One-in, two-out

- 26) The measures contained in this impact assessment are in scope of "One-in-two-out" (OITO).
- 27) The proposed regulation is straightforward, and not expected to impact on many employment businesses or agencies. It is estimated that familiarisation with the proposed regulation will be quick for most recruitment firms, to establish that it is not relevant to them, and will cost £0.08m overall.
- 28) Overall, our best estimate is for a annual equivalent net cost to business of £0.01 million.

Table 2: Monetised costs and benefits for Business included in One-in-Two-Out estimate

	£ millions
<u>Transition costs</u>	
Familiarisation with revised Conduct Regulations (2013 prices)	0.08
Equivalent annual net cost to Business (2009 prices)	0.01

Summary

- 29) Overall, the proposed changes are estimated to have a monetised annual net cost to the economy of £0.08 million (net present value). There are potential other costs and benefits that have not been monetised due to the lack of information about the extent of the problem. Information is being sought at the consultation stage.

Table 3: Summary of costs and benefits for the Conduct Regulations reform

Estimated Costs and benefits (£ millions)

High **Best Estimate** Low

Costs

Familiarisation costs to employment businesses and agencies

0.08

Potential non-monetised costs

Cost to affected firms of advertising placements located in Great Britain to people in Britain. Potential costs of revising recruitment procedures to cater for English speakers.

Benefits

Potential non-monetised benefits

Potential benefit to individuals in Britain from wider choice of jobs, and potential benefit to hirers using recruitment firms due to wider pool of candidates

Annex 1

Small and micro business assessment

1. As noted above, we currently have very little evidence that recruitment firms are exclusively advertising overseas jobs that are located in Great Britain. We will request information on this area in the Consultation. However, we expect that at most only a few recruitment firms would be advertising GB jobs exclusively overseas. Therefore this policy is unlikely to negatively impact on small and micro businesses. We also expect, prior to any information provided at the consultation stage, that the costs to affected businesses would be low.

Equality Assessment

1. The Department for Business, Innovation and Skills (BIS) is subject to the public sector equality duties set out in the Equality Act 2010. An equality analysis is an important mechanism for ensuring that we gather data to enable us to identify the likely positive and negative impacts that policy proposals may have on certain groups and to estimate whether such impacts disproportionately affect such groups.
2. The proposed policy should be beneficial to equality as it removes a restriction to the labour market by requiring employment businesses and agencies to advertise placements in Great Britain to individuals in Britain. It makes certain a requirement that may potentially have already existed under the Equality Act 2010.
3. The proposed policy is not expected to have any negative impact on individuals with protected characteristics.

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