



Department  
for Business  
Innovation & Skills

## Recruitment Sector

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

JULY 2014

# Contents

Contents .....	2
<b>Prohibiting employment agencies and employment businesses from advertising jobs exclusively in other EEA countries .....</b>	<b>3</b>
1. Executive Summary .....	4
2. How to respond .....	5
3. Confidentiality & Data Protection .....	6
4. Help with queries .....	7
5. The proposal .....	8
6. Consultation questions .....	11
7. What happens next? .....	12
<b>Annex B: Consultation principles .....</b>	<b>14</b>
Comments or complaints on the conduct of this consultation .....	14
<b>Annex C: Consultation on prohibiting employment agencies and employment businesses from advertising jobs exclusively in other EEA countries response form .....</b>	<b>15</b>

# Prohibiting employment agencies and employment businesses from advertising jobs exclusively in other EEA countries

The recruitment sector plays an important role in ensuring that the UK's labour market by improving the efficiency of matching demand for jobs to demand for workers. However, 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.

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.

This consultation seeks views on a new regulation which would prohibit employment agencies and employment businesses advertising jobs solely in other EEA countries

Issued: 29 July 2014

Respond by: 2 September 2014

Enquiries to:

Caroline Daly/ Tom Jarvis  
Labour Market Directorate  
Department for Business, Innovation and Skills  
1 Victoria Street  
London  
SW1H 0ET

Email: [recruitment.sector@bis.gsi.gov.uk](mailto:recruitment.sector@bis.gsi.gov.uk)  
Telephone: 020 7215 5558

## 1. Executive Summary

1. On the 9 April 2014 as part of a wider announcement on illegal working and stronger penalties for unscrupulous employers, the Prime Minister announced plans to tackle recruitment agencies that discriminate against workers in Great Britain by advertising exclusively overseas.
2. We are seeking views on a proposal to amend the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (as amended) to include a new regulation which would prohibit employment agencies and employment businesses from advertising vacancies in another EEA country without also advertising in Great Britain.
3. We are seeking views from a wide range of stakeholders, including employment agencies and employment businesses, employers, labour providers, trade bodies and individuals who use the recruitment sector to find work.
4. As this is a new proposal we are consulting on this separately, with a further consultation on wider reforms to the legislation to follow in the autumn.
5. The closing date for responses to the consultation is 2 September 2014. Within 12 weeks of this date the Government will publish a summary of the responses to the consultation and the next steps to be taken.

## 2. How to respond

6. 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://www.surveymonkey.com/s/VY827WX>

7. The consultation response form is available electronically on the consultation page: <https://www.gov.uk/government/consultations/recruitment-sector-prohibiting-the-advertising-of-jobs-exclusively-in-other-eea-countries> (until the consultation closes). The form can be submitted online/by email or by letter to:

Caroline Daly / Tom Jarvis  
Labour Market Directorate  
Department for Business, Innovation and Skills  
1 Victoria Street  
London  
SW1H 0ET

Email: [recruitment.sector@bis.gsi.gov.uk](mailto:recruitment.sector@bis.gsi.gov.uk)

8. You may make printed copies of this document without seeking permission.
9. Other versions of the document in Braille, other languages or audio-cassette are available on request.

### **3. Confidentiality & Data Protection**

10. 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.
  
11. 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.

## 4. Help with queries

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

Caroline Daly/ Tom Jarvis  
Labour Market Directorate  
Department for Business, Innovation and Skills  
1 Victoria Street  
London  
SW1H 0ET

Email: [recruitment.sector@bis.gsi.gov.uk](mailto:recruitment.sector@bis.gsi.gov.uk)

Telephone: 020 7215 5558

The consultation principles are in Annex B.

## 5. The proposal

### Background

13. 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'). 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.
14. The legislation covers all employment agencies and employment businesses in England, Scotland and Wales and 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.
15. 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. 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.
16. In 2013 the Government consulted on wider reforms to the Employment Agencies Act and the Conduct Regulations and announced our intention to replace the current regulatory framework with a new set of regulations. We are consulting separately on the proposal to prohibit employment agencies and employment businesses from advertising exclusively overseas as this is a new proposal. A further consultation on wider reforms to the legislation will follow in the autumn.

### Enforcement

17. The legislation is enforced by the Employment Agency Standards inspectorate (EAS) based in BIS. In line with the Regulator's Code, EAS focuses its work on encouraging and promoting compliance.
18. Criminal penalties exist within the Employment Agencies Act and a successful prosecution may currently lead to a fine of up to £5,000 in a Magistrate's Court or an unlimited fine in a Crown Court. There is also a provision 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.



## Proposal

19. A draft of the regulation can be found at Annex A.
20. The Government is proposing to amend the Conduct Regulations to include a new regulation (subject to a defence) which would require employment agencies and employment businesses to ensure that all jobs that are based in Great Britain (in the sense that the work is ordinarily carried out there) are advertised in GB. The regulation would not ban employment agencies and employment businesses from advertising in other EEA countries but it would require them to ensure that if a job is advertised in another EEA country, it is simultaneously advertised in GB.
21. The new regulation would require employment agencies and employment businesses to ensure that all advertisements for jobs based in GB are published in English. Employment agencies and employment businesses would be free to publish advertisements in additional languages, if they chose to.
22. Employment agencies and employment businesses that advertise in other EEA countries would need to demonstrate, through record keeping, that they have complied with the requirement to advertise the vacancy, or vacancies, in GB and in English.
23. Universal Jobmatch is the Department for Work and Pensions' online job posting and matching service for employers /recruiters and jobseekers. Although employment agencies and employment businesses are not compelled to use Universal Jobmatch, those that choose to do so will be compliant with the new regulation.
24. The regulation will include a defence so that it will not affect recruitment arrangements that would comply with the Equality Act 2010. In some situations it may be justifiable for a recruiter to advertise a vacancy solely in another EEA country. The Equality Act 2010 contains detailed rules that ensure that the recruiter, in these circumstances, is not liable for discriminating on the grounds of nationality. In applying the new regulation justification will be considered on a case-by-case basis.
25. The new regulation will only apply to vacancies advertised by employment agencies and employment businesses. However, the Equality and Human Rights Commission will shortly be commencing a research project looking more widely at potential discriminatory recruitment practices, by employers as well as employment agencies and employment businesses.

## Resident Labour Market Test

26. The new regulation will only apply to vacancies advertised in EEA countries. UK immigration rules already favour native workers over non-EEA through the requirement for each position to undergo a 'Resident Labour Market Test' prior to being advertised outside the EEA.
27. In order to fulfil the requirements of the Resident Labour Market Test each position must be advertised in the UK for a minimum of 28 days through two separate media. One of these media must be the Job Centre Plus's online platform and the other is at the discretion of the employer. It may be another online platform, trade or local press. Only if the employer is unable to fill a position locally within this period are they free to advertise

overseas. Evidence of discharge of the Resident Labour Market Test must be provided alongside the non-EEA visa applications.

28. The only exemption to the Resident Labour Market Test is where a post is deemed a 'shortage occupation' for the UK. These roles, defined annually by the Government's Migration Advisory Committee, are free to bypass the 28 day 'EEA only' advertising period and offer their post globally from the initial date of advertisement.

## 6. Consultation questions

A response form is provided at Annex C

### Question 1

- a) Do you think that the draft regulation meets the Government's objective of creating a level playing field for workers in Britain by prohibiting employment agencies and employment businesses from advertising jobs solely in other EEA countries? Yes/No
- b) Please provide comments

### Question 2

If you answered 'no' to Question 1, why do you think that the draft regulation will not meet the Government's objective?

### Question 3

Do you agree that the regulation is appropriate to deal with recruitment advertising on websites?

### Question 4

- a) We believe that the new regulation would both expand the range of job opportunities open to people in the UK and also expand the range of people that businesses can choose from. Do you agree? Yes/No
- b) Can you see any downsides – in terms of costs or any other issues? Yes/No
- c) Please provide comments

### Question 5

- a) Do you have any information about jobs that have been advertised solely in other EEA countries? Yes/No
- b) Please provide details e.g. what was the job being advertised, where was the job advertised?

### Question 6

Do you have any other comments to add in relation to this consultation?

## **7. What happens next?**

Within 12 weeks of the close of this consultation we will publish a summary of the responses to the consultation and a Government response. This will set out the next steps the Government will take in light of this consultation.

## **Annex A: Draft of new regulation prohibiting employment agencies and employment businesses advertising jobs exclusively in other EEA countries**

### **“Advertising in other EEA states**

1. (1) Before or at the same time as an agency or employment business advertises a GB vacancy in an EEA state other than the United Kingdom, it must advertise it in English in Great Britain.  
(2) Paragraph (1) does not apply if the agency or employment business first advertises the GB vacancy in English on a website accessible both from the EEA state in question and from Great Britain.  
(3) It is a defence in any proceedings under—
  - (a) section 5(2) of the Act, or
  - (b) regulation 30In respect of a contravention of paragraph (1) that the agency or employment business did not discriminate in a manner prohibited by section 55 of the Equality Act 2010(1).  
(4) For the purposes of this regulation—
  - (a) references to advertising include causing to be advertised,
  - (b) references to advertising in a country or territory include advertising on a website that is accessible from that country or territory,
  - (c) “A GB vacancy” means a position the duties of which are ordinarily to be performed in Great Britain.”

## 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:

John Conway,  
BIS Consultation Co-ordinator,  
1 Victoria Street,  
London  
SW1H 0ET

Telephone: 020 7215 6402  
E-mail: [john.conway@bis.gsi.gov.uk](mailto:john.conway@bis.gsi.gov.uk)

## **Annex C: Consultation on prohibiting employment agencies and employment businesses from advertising jobs exclusively in other EEA countries response form**

The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses.

The closing date for this consultation is: **2 September 2014**

Please return completed forms to:

Caroline Daly/ Tom Jarvis  
Labour Market Directorate  
Department for Business, Innovation and Skills  
1 Victoria Street  
London  
SW1H 0ET

Email: [recruitment.sector@bis.gsi.gov.uk](mailto:recruitment.sector@bis.gsi.gov.uk)

### Your details

Name:

Organisation (if applicable):

Address:

Please tick the box below that best describes you as a respondent to this consultation

<input type="checkbox"/>	Business representative organisation/trade body
<input type="checkbox"/>	Central government
<input type="checkbox"/>	Charity or social enterprise
<input type="checkbox"/>	Individual
<input type="checkbox"/>	Large business (over 250 staff)
<input type="checkbox"/>	Legal representative
<input type="checkbox"/>	Local Government
<input type="checkbox"/>	Medium business (50 to 250 staff)
<input type="checkbox"/>	Micro business (up to 9 staff)
<input type="checkbox"/>	Small business (10 to 49 staff)
<input type="checkbox"/>	Trade union or staff association
<input type="checkbox"/>	Other (please describe)

### Question 1

a) Do you think that the draft regulation meets the Government's objective of creating a level playing field for workers in Britain by prohibiting employment agencies and employment businesses from advertising jobs solely in other EEA countries?

a.  Yes  No

b) Please provide comments



**Question 2**

If you answered 'no' to Question 1, why do you think that the draft regulation will not meet the Government's objective?

**Question 3**

Do you agree that the regulation is appropriate to deal with recruitment advertising on websites?

**Question 4**

a) We believe that the new regulation would both expand the range of job opportunities open to people in the UK and also expand the range of people that businesses can choose from. Do you agree?

a.  Yes  No

b) Can you see any downsides – in terms of costs or any other issues?

a.  Yes  No

c) Please provide comments

### Question 5

a) Do you have any information about jobs that have been advertised solely in other EEA countries?

a.  Yes  No

b) Please provide details e.g. what was the job being advertised, where was the job advertised?

### Question 6

Do you have any other comments to add in relation to this consultation?

Thank you for taking the time to let us have your views. We do not intend to acknowledge receipt of individual responses unless you tick the box below.

Please acknowledge this reply

At BIS we carry out our research on many different topics and consultations. As your views are valuable to us, would it be okay if we were to contact you again from time to time either for research or to send through consultation documents?

Yes  No

© Crown copyright 2014

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. Visit [www.nationalarchives.gov.uk/doc/open-government-licence](http://www.nationalarchives.gov.uk/doc/open-government-licence), write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email [psi@nationalarchives.gsi.gov.uk](mailto:psi@nationalarchives.gsi.gov.uk).

This publication is available from [www.gov.uk/bis](http://www.gov.uk/bis)

Any enquiries regarding this publication should be sent to:

Department for Business, Innovation and Skills  
1 Victoria Street  
London SW1H 0ET  
Tel: 020 7215 5000

If you require this publication in an alternative format, email [enquiries@bis.gsi.gov.uk](mailto:enquiries@bis.gsi.gov.uk), or call 020 7215 5000.

**BIS/14/985**