



Department  
for Business  
Innovation & Skills

## RECRUITMENT SECTOR LEGISLATION :

Consultation on reforming the  
regulatory framework for  
employment agencies and  
employment businesses –  
impact assessment

JANUARY 2013

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<b>Title:</b>  <b>Consultation on reforming the regulatory framework for employment agencies and employment businesses</b>  <b>IA No:</b> 1  <b>Lead department or agency:</b> BIS  <b>Other departments or agencies:</b>	<b>Impact Assessment (IA)</b>
	<b>Date:</b> 30/11/2012
	<b>Stage:</b> Consultation
	<b>Source of intervention:</b> Domestic
	<b>Type of measure:</b> Primary legislation
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<b>Summary: Intervention and Options</b>	<b>RPC Opinion:</b> 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 2009 prices)	In scope of One-In, One-Out?	Measure qualifies as
£m 198.6	£m 196.0	£m -20.9	Yes	Out

**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. The regulations are complicated and difficult to understand, placing a burden on business and potentially acting as a barrier to growth. Government intervention is necessary to streamline the regulations and to ensure that the recruitment sector continues to contribute to a flexible and effective labour market. Further, the Government will seek views on different enforcement options as the current criminal regime is unlike the majority of UK employment law which is enforced through civil employment tribunals.

**What are the policy objectives and the intended effects?**

The Government wants to reform the way the recruitment sector is regulated, removing burdensome regulation, enabling the sector greater freedom to fulfil its role in providing labour market flexibility and adaptability. However, the Government believes regulation remains necessary, with four key outcomes important in ensuring participation in the labour market and continued protection for work-seekers:

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

**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**

1. No Change Option: retain the current legislation and regulations;
2. The Preferred option: Amend legislation and remove burdensome regulations, retaining the minimum regulation necessary to meet the Government's objectives. The Government will also encourage the recruitment sector to maintain high standards by demonstrating transparency (by making relevant management information available to work-seekers and hirers).  
 For option 2, two different enforcement options are being proposed:
  - a. No change – continuation of current Government enforcement using, ultimately, criminal sanctions.
  - b. Individual civil enforcement via Employment Tribunals - the Government will consult on whether individuals should be able to enforce their own rights at Employment Tribunals, bringing these regulations in line with most other areas of employment law.

**Will the policy be reviewed? It will be reviewed. If applicable, set review date: Month/Year**

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.	<b>Micro</b> Yes	<b>&lt; 20</b> Yes	<b>Small</b> Yes	<b>Medium</b> Yes	<b>Large</b> Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? N?A	<b>Traded:</b> -		<b>Non-traded:</b> -		

***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:

## **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 2a

Description: **Minimum regulation with direct government enforcement (criminal sanctions)**

Price Base Year 2012	PV Base Year	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: £30.6	High: 246.3	Best Estimate: 200.2

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

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

No costs have been monetised for any of the main affected groups.

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

There are potential costs to the Exchequer from providing guidance and publicising the new Conduct Regulations, and from government encouraging businesses to self regulate. Businesses will face some transition costs in adapting to the new, reduced, set of regulations – but these are expected to be small, as the new regulations will follow the principles of a sub-set of the existing regulations, which businesses are already expected to comply with. Businesses may also face some costs if they start publishing management information, or make more data available.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low		3.6	30.6
High		29.1	246.3
Best Estimate		23.7	200.2

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

Businesses will benefit from a reduction in administration required due to the proposed cut in regulation. In the unlikely event that administration is cut by the full extent, the estimated annual benefit is £29.1m. However, some of this activity is likely to be required by the market (for instance in line with industry trade associations' codes of conduct): the best estimate is of an average annual benefit to business of £23.7m, with a low estimate of £3.6m.

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

The reduced regulation, and potential increase in trust caused by self-regulation, may boost the level of work for the recruitment sector.

### Key assumptions/sensitivities/risks

Discount rate (%)

3.5

The monetised costs/benefits of reducing regulation reflect the estimated administrative costs per existing regulation, based on ORC International's 2008 admin burden of employment law study.

The market is likely to still require some, no longer regulated, administrative activity to continue. This is estimated from the Recruitment and Employment Confederation's code of conduct, as described in their Red Tape Challenge submission.

There is a possible risk of costs to work-seekers if employment businesses no longer adequately inform and document charges for additional goods and services provided to temporary workers, which will no longer be regulated under Option 2.

### BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: 0	Benefits: 21.3	Net: 21.3		

# Summary: Analysis & Evidence

# Policy Option 2b

Description: **Minimum regulation with individual civil enforcement**

Price Base Year 2012	PV Base Year	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: £29.0	High: 244.8	Best Estimate: 198.6

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low			
High			
Best Estimate	0	0.8	6.9

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

It is estimated that employers will incur annual costs of £0.54m, and work-seekers annual costs of £0.18m, due to the time spent on dealing with the Employment Tribunal system, and the cost of advice and representation. There would also be an annual cost of £0.17m to the Exchequer, to cover the increased administration costs for Acas and HMCTS arising from the increased caseload.

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

Claimants not qualifying for remission will have to pay a fee if they undertake a full employment tribunal claim (though if successful the respondent may have to cover the payment). The Exchequer would gain as the fees would partially cover the costs.

The Exchequer would face transition costs in closing the Employment Agency Standards Inspectorate, and preparing Acas/HMCTS for dealing with claims arising from the regulations.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low		4.2	35.9
High		29.8	251.7
Best Estimate		24.3	205.5

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

As with 2a).

Also, the Exchequer has an annual benefit from not having to pay for the EAS of £0.70 m

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

Work-seekers may gain an award greater than the amount they are owed by the business. They will also be allowed to assert their rights at tribunals in relation to these regulations. Both work-seekers and businesses may benefit from simplification to one enforcement regime for the sector.

**Key assumptions/sensitivities/risks**

Discount rate (%) 3.5

As with 2a). Also, the estimated annual number of cases proceeding to the ET system is based on the number of cases multiplied by the proportion of 2011/12 infringements that were of regulations remaining under option 2. Therefore, it is likely that more potential claims will occur (for instance, some complaints result in inspections where no regulatory infringements are found).

Costs of ET cases relates to estimates based on SETA 2008, on time taken by claimants and employers, and use/median cost of advice and representation. The ET system is due to change in 2013, with potential claims first going through Acas early conciliation – we don't know how effective this would be for recruitment sector cases, but could potentially reduce costs to participants in the ET process.

It is assumed that work-seekers and businesses do not pay for external advice when dealing with EAS enforcement processes.

**BUSINESS ASSESSMENT (Option 2)**

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: 0.4	Benefits: 21.3	Net: 20.9	Yes	OUT

## Specific Impact Tests: Checklist

Set out in the table below where information on any specific impact tests undertaken as part of the analysis of the policy proposal can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
<b>Statutory equality duties</b> <sup>1</sup> <a href="#">Statutory Equality Duties Impact Test guidance</a>	No	38
<b>Economic impacts</b>		
Competition <a href="#">Competition Assessment Impact Test guidance</a>	No	47
Small firms <a href="#">Small Firms Impact Test</a>	No	47
<b>Environmental impacts</b>		
Wider environmental issues	No	48
<b>Social impacts</b>		
Health and well-being <a href="#">Health and Well-being Impact Test guidance</a>	No	48
Human rights <a href="#">Human Rights Impact Test guidance</a>	No	48
Justice system <a href="#">Justice Impact Test guidance</a>	Yes	49
Rural proofing <a href="#">Rural Proofing Impact Test guidance</a>	No	49
<b>Sustainable development impacts</b>		
Sustainable development <a href="#">Sustainable development Impact Test</a>	No	49

<sup>1</sup> Public bodies including Whitehall departments are required to consider the impact of their policies and measures on 'protected characteristics' under the Equality Act 2010. The protected characteristics are: age, disability, gender reassignment, race, religion or belief, sex and sexual orientation, marriage and civil partnership along with pregnancy and maternity.

## Evidence Base (for summary sheets) – Notes

### 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](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](http://www.legislation.gov.uk/uksi/2003/3319/pdfs/uksi_20033319_en.pdf)
- 3 BIS Employment Law Review Annual Update 2012, March 2012  
<http://www.bis.gov.uk/assets/biscore/employment-matters/docs/e/12-p136-employment-law-review-2012>
- 4 The Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2010  
[http://www.legislation.gov.uk/ukdsi/2010/9780111497326/pdfs/ukdsi\\_9780111497326\\_en.pdf](http://www.legislation.gov.uk/ukdsi/2010/9780111497326/pdfs/ukdsi_9780111497326_en.pdf)
- 5 Terms and Conditions of Employment, the Agency Workers Regulations 2010  
[http://www.legislation.gov.uk/uksi/2010/93/pdfs/uksi\\_20100093\\_en.pdf](http://www.legislation.gov.uk/uksi/2010/93/pdfs/uksi_20100093_en.pdf)
- 6 Employment Agency Standards Inspectorate Enforcement Policy Statement, March 2010  
<http://www.bis.gov.uk/assets/biscore/employment-matters/docs/10-851-eas-inspectorate-enforcement-policy.pdf>
- 7 Resolving workplace disputes: Government response to the consultation  
<http://www.bis.gov.uk/assets/biscore/employment-matters/docs/r/11-1365-resolving-workplace-disputes-government-response.pdf>
- 8 The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004  
<http://www.legislation.gov.uk/uksi/2004/1861/contents/made>
- 9 Government response and impact assessment on consultation on the introduction of fees to Employment Tribunals and Employment Appeal Tribunals  
<https://consult.justice.gov.uk/digital-communications/et-fee-charging-regime-cp22-2011>



## Evidence base

Option 2a – annual profile of monetised costs and benefits (£m) constant (2011) prices to nearest £10,000

	Y <sub>0</sub>	Y <sub>1</sub>	Y <sub>2</sub>	Y <sub>3</sub>	Y <sub>4</sub>	Y <sub>5</sub>	Y <sub>6</sub>	Y <sub>7</sub>	Y <sub>8</sub>	Y <sub>9</sub>
<b><u>Transition costs</u></b>										
(With maximum business benefit)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Best estimate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
With lowest business benefit)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
<b><u>Annual recurring costs</u></b>										
(With maximum business benefit)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Best estimate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
With lowest business benefit)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
<b><u>Total annual costs</u></b>										
(With maximum business benefit)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Best estimate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
With lowest business benefit)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
<b><u>Transition benefits</u></b>										
(With maximum business benefit)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Best estimate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
With lowest business benefit)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
<b><u>Annual recurring benefits</u></b>										
(With maximum business benefit)	0.00	32.38	32.38	32.38	32.38	32.38	32.38	32.38	32.38	32.38
Best estimate	0.00	26.31	26.31	26.31	26.31	26.31	26.31	26.31	26.31	26.31
With lowest business benefit)	0.00	4.02	4.02	4.02	4.02	4.02	4.02	4.02	4.02	4.02
<b><u>Total annual benefits</u></b>										
(With maximum business benefit)	0.00	32.38	32.38	32.38	32.38	32.38	32.38	32.38	32.38	32.38
Best estimate	0.00	26.31	26.31	26.31	26.31	26.31	26.31	26.31	26.31	26.31
With lowest business benefit)	0.00	4.02	4.02	4.02	4.02	4.02	4.02	4.02	4.02	4.02

**Option 2b – annual profile of monetised costs and benefits (£m) constant (2011) prices to nearest £10,000**

	Y <sub>0</sub>	Y <sub>1</sub>	Y <sub>2</sub>	Y <sub>3</sub>	Y <sub>4</sub>	Y <sub>5</sub>	Y <sub>6</sub>	Y <sub>7</sub>	Y <sub>8</sub>	Y <sub>9</sub>
<b><u>Transition costs</u></b>										
(With maximum business benefit)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
With inbetween business benefit)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
With lowest business benefit)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
<b><u>Annual recurring costs</u></b>										
(With maximum business benefit)	0.00	0.89	0.89	0.89	0.89	0.89	0.89	0.89	0.89	0.89
With inbetween business benefit)	0.00	0.89	0.89	0.89	0.89	0.89	0.89	0.89	0.89	0.89
With lowest business benefit)	0.00	0.89	0.89	0.89	0.89	0.89	0.89	0.89	0.89	0.89
<b><u>Total annual costs</u></b>										
(With maximum business benefit)	0.00	0.89	0.89	0.89	0.89	0.89	0.89	0.89	0.89	0.89
With inbetween business benefit)	0.00	0.89	0.89	0.89	0.89	0.89	0.89	0.89	0.89	0.89
With lowest business benefit)	0.00	0.89	0.89	0.89	0.89	0.89	0.89	0.89	0.89	0.89
<b><u>Transition benefits</u></b>										
(With maximum business benefit)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
With inbetween business benefit)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
With lowest business benefit)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
<b><u>Annual recurring benefits</u></b>										
(With maximum business benefit)	0.00	33.08	33.08	33.08	33.08	33.08	33.08	33.08	33.08	33.08
With inbetween business benefit)	0.00	27.08	27.08	27.08	27.08	27.08	27.08	27.08	27.08	27.08
With lowest business benefit)	0.00	4.72	4.72	4.72	4.72	4.72	4.72	4.72	4.72	4.72
<b><u>Total annual benefits</u></b>										
(With maximum business benefit)	0.00	33.08	33.08	33.08	33.08	33.08	33.08	33.08	33.08	33.08
With inbetween business benefit)	0.00	27.08	27.08	27.08	27.08	27.08	27.08	27.08	27.08	27.08
With lowest business benefit)	0.00	4.72	4.72	4.72	4.72	4.72	4.72	4.72	4.72	4.72

## Problem under consideration

The United Kingdom has one of the most lightly regulated labour markets in the developed world, second only to the US and Canada<sup>2</sup>. 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.

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 1.6 million people into work each year<sup>3</sup>. The recruitment sector is regulated by the Employment Agencies Act 1973<sup>4</sup> and the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (the "Conduct Regulations")<sup>5</sup>. 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.

Prior to 1973, the sector was subject to an uneven regulatory framework. As numbers of agencies increased, some local authorities obtained private Acts requiring agencies to be licensed and operated in accordance with by-laws to protect work-seekers from exploitation. This resulted in an uneven and unsatisfactory regulatory framework. Unscrupulous businesses were able to establish themselves in, and conduct business from, unregulated areas. The Employment Agencies Act 1973 sought to ensure that there was a consistent approach across Great Britain. The licensing provisions of the Act were repealed in 1995. However, since then there have been many amendments to the legislation, which has resulted in a very complex set of regulations which place a burden on business, and are not fit for purpose in the UK's modern labour market. Through the Red Tape Challenge, the Government identified the regulations as needing reform. The regulations are complicated and difficult to understand and have not developed quickly enough to keep up with changes in the recruitment sector. Further, the current enforcement regime is unlike the majority of UK employment law which is enforced through civil employment tribunals.

Feedback from sector representatives indicates that businesses generally believe that some regulation is necessary to maintain standards across the recruitment sector but that there is scope for improving how the sector is regulated. Overall, businesses want to ensure that there is a level playing field so there is no unfair advantage to those mistreating work seekers.

The consultation will identify when it is appropriate for legislation to impose rules on the recruitment sector and when it is more appropriate that the sector is able to develop its own business models to meet the needs of the marketplace. In reforming how the recruitment sector is regulated, the Government wants to ensure that the sector continues to fulfil its role in providing flexibility and adaptability to the labour market. The Government also wants to retain

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<sup>2</sup> Venn, D (2009) Legislation, collective bargaining and enforcement: Updating the OECD employment protection indicators, *OECD Social, Employment and Migration Working Papers*, No. 89, OECD Publishing. <http://dx.doi.org/10.1787/223334316804>

<sup>3</sup> The Recruitment and Employment Confederation's Industry Trends Survey 2011/12

<sup>4</sup> Employment Agencies Act 1973, [http://www.legislation.gov.uk/ukpga/1973/35/pdfs/ukpga\\_19730035\\_en.pdf](http://www.legislation.gov.uk/ukpga/1973/35/pdfs/ukpga_19730035_en.pdf)

<sup>5</sup> The Conduct of Employment Agencies and Businesses Regulations 2003

[http://www.legislation.gov.uk/uksi/2003/3319/pdfs/uksi\\_20033319\\_en.pdf](http://www.legislation.gov.uk/uksi/2003/3319/pdfs/uksi_20033319_en.pdf)

protections for workers, particularly restrictions on employment agencies and businesses charging fees for work-finding services and ensuring that temporary workers are paid for the work they have done.

## Background

The recruitment sector is an important contributor to our economy, contributing over £22 billion in 2011<sup>6</sup>. In 2012, there were around 17,900 employment agencies and employment businesses<sup>7</sup> within the recruitment sector<sup>8</sup>. Slightly under two-thirds of these (11,045) 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, 2012 ONS data**

Type of business	Firm size (number of employees)				Total
	Micro (0-9)	Small (10-49)	Medium (50-249)	Large (250+)	
employment agencies	5,540	885	335	60	6,820
	81%	13%	5%	1%	100%
employment businesses	7,435	2,115	1,150	345	11,045
	67%	19%	10%	3%	100%
whole economy	1,905,255	200,195	34,960	8,775	2,149,185
	89%	9%	2%	0%	100%

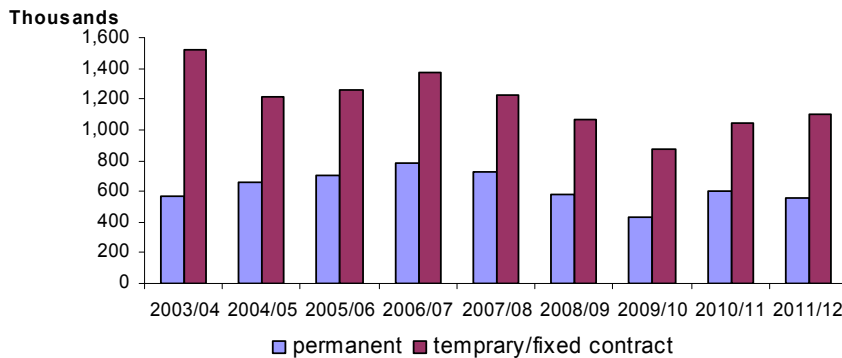
Over 1.6 million people are placed into work by the recruitment sector each year, in 2011/12 there were around 550,000 permanent placements, dropping back from 604,000 in the previous year. However, temporary placements were up 5.4% at 1,106,000 in 2011/12 compared to 879,000 the previous year (Figure 1). As a proportion of total employment, permanent placements by the recruitment sector fell to 1.9% in 2011/12 but remained above the recent low of 1.5% in 2009/10. Temporary placements rose to 3.8% from 3.0% in 2009/10.

### **Figure 1: People placed into work by the recruitment sector**

<sup>6</sup> ONS Annual business Survey 2011. In comparison, according to the same source, the manufacture of transport equipment (including motor vehicles and aerospace manufacture) contributed £20bn in 2011, while telecommunications contributed around £27 bn.

<sup>7</sup> 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.

<sup>8</sup> Office for National Statistics (ONS) figures. 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 registered for VAT and/or PAYE, and rounded to the nearest 5.



Source: REC Recruitment Industry Trends

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 which have been identified by the Low Pay Commission (LPC) as being vulnerable to exploitation e.g. social care and the hotel and cleaning industry

### The current regulations

The 1973 Act and the Conduct Regulations seek to ensure that work-seekers, either those looking for permanent or temporary work, have free access the labour market, are able to move between jobs within the labour market, and can use the recruitment sector with confidence. The main parts of the regulatory framework fall into the following themes:

#### Protection for workers

- Free of charge access to the labour market for temporary and permanent work seekers at the point of entry.
- Free movement between jobs for work-seekers, subject to reasonable temp-to perm transfer fees between businesses.
- Temporary workers are paid for the work they do, whether the employment business has been paid by the hirer or not and there is clarity on who is responsible for paying the worker.
- Obligations on an employment agency or business where a work-seeker is required to work away from home – such as providing details of travel arrangements and costs and accommodation arrangements and costs.

#### Content of terms

- An employment business is required to inform and agree terms with the work-seeker in writing.
- An employment business cannot provide services to a hirer until it has agreed terms with them.

#### Protection for vulnerable people

- Employment businesses and agencies are required to carry out an identity check of the work-seeker and to ensure that the work-seeker has the experience, training, qualifications and necessary authorisation (e.g. Criminal Records Bureau checks).

#### Health and safety

- Employment businesses and agencies are required to obtain health and safety information from a hirer before a suitable work-seeker is provided.

#### Entertainment and modelling

- Restrictions on charging of fees for additional services
- Cooling off periods in which workers have the right to cancel an agreement for services without detriment to themselves

## Industrial disputes

- An employment business or agency will be prevented from supplying work-seekers to replace a striking employee.

## Advertisements

- The regulations ensure that job advertisement or employment business must have certain components such as the location of the post, rate of pay and nature of the work.

There are also a number of additional regulations including those relating to record-keeping, definitions of terms, confidentiality and civil liability.

## Rationale for Intervention/Policy Objectives

The Government believes that legislation should be minimised and used only where work seekers are most at risk of exploitation. Our vision for the recruitment sector is that it will be regulated by the simplest regulatory framework possible, allowing recruitment firms to lay an active role in developing their own methods of maintaining standards so they can compete for work seekers and hiring companies. The current set of Conduct Regulations impose a costly burden on employment agencies and businesses, in places being complicated and difficult to understand, partly due to a number of revisions since 2003. By removing costly and complex regulations where possible, the Government will help the recruitment sector to continue to contribute to a flexible and effective labour market. However, we consider it necessary to continue to regulate the sector to ensure that work-seekers are protected against potential exploitation.

We believe that the following four outcomes are important to ensure that the recruitment sector operates fairly and flexibly:

- i. **Employment businesses and employment agencies are restricted from charging fees to work-seekers:** In order to maximise participation in the UK's labour market, individuals should be able to access jobs without having to pay up-front fees to the recruitment sector.
- ii. **There is clarity on who is responsible for paying temporary workers for the work they have done:** Temporary workers are part of a tripartite arrangement (between themselves, an agency and a hirer) where it can be unclear who is responsible for paying their wage. The new legislation will continue to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done so that individuals have confidence in taking on temporary work.
- iii. **The contracts people have with employment firms should not hinder their movement between jobs and temp-to-perm transfer fees are reasonable:** The Government believes that workers should be able to move within the labour market without detrimental action being taken against them. Therefore, the new regulations proposed will continue to ensure that employment businesses are restricted from penalising a work-seeker for terminating or giving-notice to terminate a contract with them. Temporary work is also an important route into permanent work. Hirers sometimes take someone on temporarily to test their suitability for a permanent placement. While employment businesses should be able to charge a transfer fee in instances where a temporary agency worker is made a permanent employee at the hiring company, we will ensure that these transfers are reasonable and do not restrict people getting permanent work.

- iv. Work-seekers have the confidence to use the sector and are able to assert their rights:** Work-seekers should be able to access justice when things go wrong with an employment business or agency even if there is no employment contract for them to fall back on. Enabling individuals to enforce their rights would bring the recruitment sector in line with the majority of employment law. Also, we believe that industry-wide disclosure of market information would lead to greater confidence in the recruitment sector among work-seekers, as well as hirers, by increasing transparency about individual firms' practices.

To achieve our vision we would replace the Employment Agencies Act 1973 and the Conduct Regulations with new legislation which would focus on the four outcomes above. The Government would only legislate in these four areas, freeing employment agencies and businesses from additional regulation and allowing them to operate in the way that is best for them.

Reforming how the recruitment sector is regulated will provide an opportunity to address some of the following problems with the current regulations that have been identified.

#### The regulations are fragmented and complex

The Regulations' complexity comes from many successive amendments, complicated exceptions for specific groups such as the entertainment sector and self-employed individuals and different treatment for employment agencies and employment businesses.

The Regulations currently regulate both business-to-business and business-to-individual relationships in a sector that is critical for providing flexible labour to the economy and thus supporting growth. There is scope to remove most of the business to business regulations and to focus on the business-to-individual relationship and key protections for work-seekers.

#### Entertainment and modelling sector

The Regulations allow those agencies that find work for actors, entertainers and models to charge of fees to work-seekers in certain limited circumstances (the rest of the recruitment sector cannot charge these fees). In general, fees charged to these types of work-seekers can only be taken from earnings in relation to work that has already been found for those workers. There is, however, an exception where an employment agency charges an upfront fee to promote the work-seeker in a publication for the purpose of finding a work-seeker employment or for providing hirers with information.

Some organisations charge work-seekers upfront work-finding fees as a legitimate part of their business model. These tend to be casting directories in the entertainment industry, which charge work-seekers a fee for including their details in online and hard copy databases. These are well established in the industry as a means for casting directors to hire actors, and are a legitimate route to work for many in the acting and entertainment industry.

The Government has tried to strike a balance between tackling the main areas of abuse of upfront fees charged to work seekers, with those of the legitimate directories or online services for which upfront fees are an integral part of their business model. In April 2008, a cooling off period was introduced prohibiting the taking of such fees until seven days had elapsed. This amendment did not prove effective at preventing abuse of the charging of upfront fees.

In October 2010<sup>9</sup> a further amendment to the Regulations was introduced to include a ban on employment agencies charging upfront work-finding fees to photographic and fashion models.

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<sup>9</sup> The Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2010  
[http://www.legislation.gov.uk/ukdsi/2010/9780111497326/pdfs/ukdsi\\_9780111497326\\_en.pdf](http://www.legislation.gov.uk/ukdsi/2010/9780111497326/pdfs/ukdsi_9780111497326_en.pdf)

In addition, the cooling off period was extended to 30 days to any fees charged by an employment agency to actors, background extras and walk-ons, for inclusion in a publication or website. For the remaining occupations which are listed in Schedule 3 (related to behind the scenes work such as production staff, cameramen etc) there was no evidence that work-seekers were at risk of abuse and the cooling off period remained at 7 days.

### The regulations have not kept pace with developments in the online sector

Online recruitment services have developed significantly since the Conduct Regulations were introduced in 2003 due to the fast evolving nature of the online world. Improvements in electronic software and systems enable recruitment agencies to advertise jobs quickly and to reach a wider audience of work-seekers.

Currently, if an organisation is offering work-finding services, as defined in the Employment Agencies Act 1973, then they are in scope of the Conduct Regulations and must therefore comply with them. The Government is aware of the concerns raised by online agencies and that the nature of these online services can make it difficult to be compliant with the Regulations. This issue was consulted on in 2010.

In October 2010<sup>10</sup> the Conduct Regulations were amended to assist online recruiters by simplifying the checks that employment agencies were required to carry out on work-seekers, and the terms they have to issue to work-seekers and hirers.

### The regulatory framework is enforced by the Government

The recruitment sector currently operates under two regimes, one relying on criminal sanctions under the Conduct Regulations and the other civil under the Agency Workers Regulations 2010 (AWR)<sup>11</sup>. Although the AWR implement most of the EU Agency Workers Directive the UK has also relied on the existing Conduct Regulations and the 1973 Employment Agencies Act to implement provisions around reducing barriers to permanent employment and restricting the charging of fees for work-finding services. The complexity of operating under two different regimes may increase the burden on businesses.

Having this dual regime to implement the Directive means that agency workers can only personally seek redress in employment tribunals for those rights that are part of the AWR and not those in the Conduct Regulations. This arrangement may present a barrier to individuals seeking redress. Some individuals do, however, make a claim to the Small Claims Court e.g. if they have not been paid for the work they have done.

Enforcement based on criminal law also affects the level of proof required to make a successful prosecution. Criminal standards are applied (beyond reasonable doubt), which is much higher than the civil standard (on a balance of probabilities) used in employment tribunals and civil courts. The high standard of proof and exacting public interest considerations in criminal cases mean that only a small number of prosecutions are brought. Our consultation will test if this is a barrier to justice.

The Employment Agency Standards inspectorate (EAS)<sup>12</sup> enforces the Employment Agencies Act and the Conduct Regulations, across Great Britain. The majority of inspections (around

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<sup>10</sup> <sup>10</sup> The Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2010  
[http://www.legislation.gov.uk/ukdsi/2010/9780111497326/pdfs/ukdsi\\_9780111497326\\_en.pdf](http://www.legislation.gov.uk/ukdsi/2010/9780111497326/pdfs/ukdsi_9780111497326_en.pdf)

<sup>11</sup> Terms and Conditions of employment, the Agency Workers Regulations 2010  
[http://www.legislation.gov.uk/ukdsi/2010/93/pdfs/ukdsi\\_20100093\\_en.pdf](http://www.legislation.gov.uk/ukdsi/2010/93/pdfs/ukdsi_20100093_en.pdf)

<sup>12</sup> Employment Agency Standards Inspectorate Enforcement Policy Statement, March 2010  
<http://www.bis.gov.uk/assets/biscore/employment-matters/docs/10-851-eas-inspectorate-enforcement-policy.pdf>



80%) are generated by complaints either via the Pay and Work Rights Helpline or directly to EAS. The other 20% of inspections are based on a combination of intelligence and the targeting of high-risk sectors<sup>13</sup>.

Although any breach of the Act or Regulations is a criminal offence, the EAS will use softer sanctions such as a warning letter or an improvement notice to bring the employer into compliance. In 2010/11 the EAS issued a warning letter in 68% of the cases investigated, with over 90% of the businesses/agencies receiving a letter demonstrating compliance with the Regulations in the timescale set.

EAS also recover money for work-seekers and workers in relation to non-payment of wages or fees due to them, or where fees were charged to them in contravention of the Regulations (see Table 2, below).

**Table 2: money recovered for complainants by the EAS since 2002**

<b>Year</b>	<b>Money recovered</b>
2002/03	£9161.51
2003/04	£8965.14
2004/05	£18,614.31
2005/06	£20,857.51
2006/07	£35,187.88
2007/08	£34,592.79
2008/09	£63,341.42
2009/10	£204,720.27
2010/11	£295,010.36
2011/12	£143,752.94

Prosecutions are only appropriate for the most serious offences and the aim of a prosecution is to deal with non-compliance, and act as a deterrent for others. In addition to prosecution or as an alternative to criminal enforcement, EAS may make an application for a Prohibition Order in the Employment Tribunal to prevent or restrict an individual or company from involvement in the running of an employment business or agency for up to ten years.

The EAS also work with other enforcement bodies such as HMRC and the HSE on the handling of multi-issue complaints which raise issues for more than one enforcement body. In 2010/11 the most common multi-issue cases were national minimum wage allegations where an employment business was involved.

The budget for EAS for 2011/12 was approximately £777k, with a recorded spend of approx £698. Taking REC figures for assumed number of temporary workers and work-seekers using employment agencies to get permanent placements in the UK, the expenditure per client for EAS is £0.42. In 2009/10, following an active marketing campaign, EAS dealt with around 2000 cases, in 2010/11 1344 cases and in 2011/12 1200 cases and investigated 2146 infringements of the regulations.

### An enforcement regime based on criminal sanctions has benefits and disadvantages

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<sup>13</sup> EAS has implemented all of the recommendations from the Hampton Implementation Review (undertaken in 2009) including the development of an improved risk assessment matrix. The risk matrix aims to make inspection activity more proportionate and cost effective by targeting inspection activity on businesses most likely to be in breach of the regulations.

An enforcement regime based on criminal sanctions is unusual in employment law but the criminal sanctions are intended to act as an incentive for recruitment sector enterprises to comply. The low number of prosecutions, suggesting few cases are serious enough to warrant prosecution, may indicate that it has some effectiveness as a deterrent. Most of the prosecutions that the Government has pursued have been to punish those business owners that do not pay or over charge workers. Where a prosecution is brought successfully, a court can make a compensation order to pay the workers money owed.

**Table 3: Number of prosecutions for breach of the Conduct Regulations 2005 - 2011**

	2006/07	2007/08	2008/09	2009/10	2010/11
Total Prosecutions	1	7	1	2	3
Successful prosecutions	1	5	1	2	3
Cost to govt of prosecution	£12,645	£17,516	£4,290	£9,679	£1,334

However, criminal penalties could be considered disproportionate when the majority of breaches are around failure to keep effective records and contractual issues. As most employment law is enforced through civil sanctions, including the Agency Workers Regulations, there would also be a potential benefit from reducing the complexity of the enforcement landscape faced by employers. The consultation will seek views on changes to enforcement, including the potential enablement of individuals to enforce the proposed new regulations through employment tribunals.

## Description of policy options

We are proposing to replace the Employment Agencies Act 1973 and the Conduct Regulations with new legislation which would focus on ensuring that four outcomes, listed below, are achieved. The Government would only legislate in these four areas, freeing employment agencies and businesses from additional regulation and allowing them to operate in the way that is best for them.

The four outcomes are:

- Employment businesses and employment agencies are restricted from charging fees to work-seekers
- Clarity on who is responsible for paying temporary workers for the work they have done
- The contracts people have with employment 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

The sector will be encouraged to self-regulate, and we are proposing that employment agencies and businesses make public, for instance via their website, certain aspects of their management information.

We are also seeking views on the current enforcement regime and whether individuals should be able to enforce their own rights at Employment Tribunals

The consultation will seek views on two policy options: (1) Do nothing and retain the current legislation and regulations; (2) Amend legislation and retain minimum regulation necessary to

meet the Government's objectives, with the Government additionally supporting the recruitment sector in maintaining standards through non-regulatory methods.

### **Option 1: No Change Option: keep current legislation, regulations and enforcement regime**

#### Description

The Government would retain the current legislation and all of the current regulations.

#### Compliance

As it would be necessary to legislate to allow for individuals to make a claim to the Employment Tribunal we would also retain the current Government enforcement regime. However, individuals would continue to have the ability to seek redress through the Government's enforcement activities. Individuals can also make a claim to the county court – for instance if they have not been paid.

### **Option 2: Preferred Option: Minimum regulation required to meet objectives plus information Sharing**

#### Description

The Government would reduce the regulatory burden on employment agencies and businesses by replacing the current legislation and replacing it with a new regulatory framework setting out the minimum regulation necessary to ensure that core protections are maintained for work-seekers.

The Government would continue to regulate in three main areas of the recruitment sector, these are: (1) ensuring employment businesses and agencies are restricted from charging fees to work-seekers; (2) ensuring that work-seekers are not prevented from terminating contracts with employment businesses and that temp-to-perm transfer fees for work-seekers becoming permanent employees with their current hirer are reasonable; and (3) ensuring that there is clarity on who is responsible for paying temporary workers for the work they have done. Some regulation would also be required to specify the minimum records necessary for agencies/businesses to demonstrate that they have complied with the new legislation. This is necessary for enforcement purposes.

The consultation will seek views on the current definition of "employment agency" and whether it needs to be amended.

Temporary agency work suits certain individuals and in some cases is a good route into permanent work where hiring companies will test the suitability of people before offering them permanent roles. The 2010/11 REC Recruitment Industry Trends Survey suggests that at least 46% of employment businesses recorded some movement of their workers into permanent employment with the hiring firm. In order to maximise the opportunity for this to happen the Government would ensure that transfer fees charged by employment businesses when a temporary worker is offered a permanent job are reasonable.

Temporary workers are reliant on a third party (the employment business) for their pay rather than the hirer they work for. This means that temporary workers could be exploited by unscrupulous businesses. Enforcement data shows that there are problems faced by temporary workers relating to non-payment, in 2011/12, 83 breaches of the Conduct Regulations (3.9% of the total number of breaches) were in relation to Regulation 10, withholding payment to

temporary workers<sup>14</sup>. The new legislation will continue to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done.

In addition, the Government will encourage employment businesses and agencies to demonstrate transparency about their business practices, allowing hirers and work seekers to make informed choices about the business/agency that best suits their needs.

Businesses/agencies could publish information on their website or jointly with a trade association. The consultation will test which information would be most relevant to hirers and work-seekers but could include the following:

- Feedback/reviews from work-seekers and hirers;
- The type of occupational sector that the agency/business operates in;
- Size of the business; staff numbers and locations;
- Number of jobs/temporary placements available
- Number of work-seekers available
- Average length of time it takes to fill a vacant post
- Average length of placements (employment businesses only)
- Number of payroll errors (employment businesses only)
- Operation of client account (for entertainment and modelling)
- Information on equalities policies

### Compliance

There are two options proposed for enforcement of the revised regulations under option 2:

- 2a) The current enforcement regime would remain in place
- 2b) Individuals would enforce their rights by making claims to the Employment Tribunal. Individual enforcement would bring the recruitment sector into line with other areas of employment law, including the Agency Workers Regulations. .

The consultation will test stakeholders' views on the principle of individual enforcement replacing the current Government enforcement regime.

## **The main stakeholders**

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

- The recruitment sector
  - Employment businesses
  - Employment agencies
- Hiring businesses
- Work-seekers
  - Temporary agency workers
  - Work-seekers looking for permanent employment
  - Specific professions in the entertainment and modelling sectors
- The Exchequer

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<sup>14</sup> EAS administrative data

## Policy option costs and benefits

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. Impact Assessments place a strong emphasis on valuing the costs and benefits in monetary terms. However, not all the potential impacts can be readily monetised. This is because for some potential impacts, information is not currently available to identify the extent of the potential impact, or how it can be monetised. This includes any transition costs involved for business in acclimatising to the proposed reduced set of regulations, or due to self-regulation and for the Exchequer in providing new guidance and publicity. The consultation will aim to gather information to help quantify the extent of some of the potential impacts not currently monetised.

The estimates of the administrative cost of compliance used in the monetisation of costs and benefits below are based on the Employment Law Administrative Burdens Survey<sup>15</sup>, conducted in 2008 by ORC International on behalf of BERR (a predecessor department of BIS), among others. These values have been updated to 2012 prices using the consumer prices index. A breakdown of the cost to business of each regulation can be found at **Annex A**.

### Option 1:

Option 1 is 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.

### Option 2:

Option 2 proposes the replacement of the Act and Conduct Regulations with a new, simpler regulatory framework, reducing unnecessary administrative burdens on employment agencies and businesses. The reforms would provide the recruitment sector with more freedom to develop its own approaches to meeting market needs, helping to improve labour market flexibility. The new regulatory framework will seek to achieve the outcomes previously discussed, which are primarily concerned with ensuring that there are continued protections for work-seekers and temporary workers.

To ensure that there is a clear record for both parties of basic terms and conditions, the proposal will ensure that employment businesses are required to specify some details in their contract with the work-seeker, including: the pay rate and how and when payment will be made. However, employment businesses and agencies won't be required under the new regulations in Option 2 to detail other terms and conditions.

Regulatory restrictions on business to business arrangements, and detailed agreements on terms and conditions between hirers and recruitment sector enterprises, will generally be removed. This should enable hirers and employment businesses and agencies to negotiate on the recruitment service provided, which would determine the extent to which businesses benefit from the reduction in regulations.

Under Option 2, employment agencies or businesses that provide additional goods or services to work-seekers would no longer be required by regulation to inform the work-seeker about the fees for such a service (such as what the fee is for, how it is calculated, and when it must be

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<sup>15</sup> E. Lambourne et al, Employment Law Admin Burdens Survey, Final Report, December 2008 (BERR/ORC International).

paid). Option 2 would also not regulate on employment agencies' and businesses' obligations to work-seekers where they are provided with travel, or required to live away from home.

In addition BIS will encourage the sector to self-regulate. Recruitment sector enterprises could do this either via sector trade associations a number of whom require members to agree to their specific code of conduct. Alternatively, they could provide information on their performance via their own website (or other communication mechanism).

#### Assumptions:

The cost-benefit analysis has assumed that the minimum regulation required to meet the policy objectives under option 2 will be based on the principles contained in the following existing regulations: Section 6 of the Act, and the Conduct Regulations 5, 6, 10, 12, 15, 23, 25, 26, 29, 33 and Schedule 5. Therefore, when considering the costs and benefits arising, these have been calculated on the basis that these regulations will remain. Any benefit from the expected greater clarity of the new set of regulations won't therefore be monetised. The analysis below assumes that there will be some activities that employment agencies and businesses will continue to carry out even though the regulatory requirement is removed under Option 2. This will depend on hirers and work-seekers expectations of the service recruitment sector firms should provide. The cost of businesses carrying out these activities is monetised based on the ORC International 2008 data (described above) for the current regulation that relates to the activity.

Where a work-seeker is to be employed working with vulnerable adults or children, the employing firm is required to carry out a Criminal Records Bureau (CRB) check (though the work-seeker might have to pay). Either the employment business or agency, or the hiring business, will therefore have to meet the administrative burden of the CRB check. Therefore, estimated benefits to businesses do not include a reduction in the administrative burden due to the removal of the requirement for employment businesses or agencies to carry out a CRB check in the new recruitment sector regulations proposed in Option 2.

#### Costs and benefits: businesses

The extent to which employment businesses and agencies will be able to reduce their administrative activity under the regulatory reduction proposed in option 2 is likely to vary. At maximum, it could be estimated that employment businesses and agencies will no longer carry out administration necessary to comply with the regulations dropped under option 2 (except CRB checks). However, in order to meet their business objectives, many employment businesses and agencies may continue to carry out some of the activities that proposal 2 would no longer require through regulation. These may include agreeing terms with work-seekers and hirers, and will continue to seek information about specific job requirements, and specific skills of work-seekers. According to the REC<sup>16</sup> in its response to the Red Tape Challenge, its Code of Practice would require its members to continue to carry out administrative activities covered by regulations 14, 17, 20 and 28, and potentially regulations 18, 21 and 27 (suggested implicitly by the Code of Practice wording).

#### Transition costs:

There will be some transition costs as businesses, especially those in the recruitment sector, adapt to the reduction in regulations. However, under option 2, the new set of regulations should be presented more clearly and transparently, and will reflect the requirements set out in the existing regulations identified above. Therefore, recruitment sector firms will have a good knowledge of the requirements carried forward. This suggests transition costs will be low. No attempt has been made to monetise the transition costs to business.

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<sup>16</sup> The Recruitment and Employment Confederation, *Red Tape Challenge – The Conduct Regulations, Response from the Recruitment and Employment Confederation*, October 2011

Under this option, the Government will encourage employment businesses and agencies to demonstrate transparency by publishing information about their business. This would enable hirers and work-seekers to select the most appropriate service provider for their needs. Employment agencies and businesses could provide the information individually (perhaps on the basis of government guidance) or through a trade association which sets out a code of conduct which members must comply with. However, if businesses not currently following either of these approaches choose to do so, there will be some initial cost. It is difficult to estimate what the cost of demonstrating transparency would be at the individual business level, as it is dependent on how much of the information to evaluate performance is readily available, whether the firm has an existing website or regular means of communication. For businesses that have readily available information and a website, then the set-up cost would be likely to be marginal. We have no information about the proportion of employment agencies or businesses that currently provide performance information, or are members of sector trade associations. Therefore, no attempt has been made to estimate the monetised value of potential transition costs for businesses of undertaking self-regulation

### Ongoing costs

As noted above, Option 2 proposes a reduction in regulatory requirements for recruitment sector businesses. We do not anticipate any ongoing costs for these businesses arising out of these proposed changes, as the direction of change should be in reducing compliance costs. As noted above, it could be that hirers rather than employment businesses and agencies carry out the CRB checks, so there could potentially be a redistribution of costs between types of business, but overall businesses shouldn't experience an increase in costs.

However, there are risks of potential costs if employment businesses and agencies end all administrative activity not required under Option 2. Hirers may be allocated unsuitable workers (for instance without the required skills, or professional qualifications, or characteristics required to cope with particular health and safety risks) if the actions set out in regulations 18 and/or 20 are not carried out. This makes it unlikely that employment businesses or agencies will undertake the maximum reduction in administrative activity that option 2 allows, as, if they take this approach, they may not provide the service that hirers require.

There will be ongoing costs if a firm chooses to self-regulate, either in time spent updating their management information (and any production costs for their website etc) or in continued membership of a trade association (though it should be noted that enterprises would have access to the range of services provided by the trade association, so only a part of the cost would relate to self-regulation). We have not attempted to monetise these costs.

### Ongoing benefits

The benefits arising to businesses depend on the degree to which they are able to reduce their administration costs due to fewer regulations. At maximum, these enterprises could potentially cut back on all the administration not required under the proposed regulations. This would mean that employment businesses and agencies wouldn't carry out this administration, but this would not result in the hiring businesses needing to undertake any additional activity. As noted above, this is unlikely as such an approach could undermine the provision of adequate recruitment services to hirers.

Therefore, employment agencies or businesses (or hirers) may find it necessary to maintain some of the administrative activities that would no longer be required by regulations. We have used the REC's interpretation of its Code of Practice as a guide to the type of administrative activity that recruitment sector businesses (or hirers) continued to carry out.

The range of estimates for possible annual benefits for business are calculated by:

- Obtaining the estimated administrative costs to business, at 2012 prices, for the regulations which will be:
  - a) retained in principle under Option 2 (£6.56 million per year)
  - b) retained in principle under Option 2, and where the activities covered by the regulation would continue to be carried out in some form by recruitment firms – identified as those regulations that the REC specifically state form part of their Code of Practice (£13.65 million per year)
  - c) retained in principle under Option 2, and where the activities covered by the regulation would continue to be carried out in some form by recruitment firms – identified as those regulations that the REC specifically and implicitly state form part of their Code of Practice (£35.95 million per year)
- Subtracting these amounts from the total administrative cost to business of the existing Conduct Regulations (£39.45 million each year), excluding the administrative cost of CRB checks (£0.51 million each year). As noted above, all these costings use the estimated costs of administrative burden from the 2008 ORC International study, uprated to 2012 prices.

The estimated benefits to business are set out in table 4 below, based on the formula:

Cost of complying with current Conduct Regulations *minus* administrative cost of CRB checks *minus* cost of complying with regulations proposed under Option 2 *minus* any cost of continuing activity no longer regulated under Option 2.

**Table 4: Estimates of potential ongoing administrative benefits for business annually (2012 prices)**

	Annual benefits £m
If enterprises no longer carry out administration no longer required under Option 2, except CRB checks	32.38
If enterprises continue to conduct required CRB checks, and activities explicitly required by REC Code of Practice	26.31
If enterprises continue to conduct required CRB checks, and activities explicitly and implicitly required by REC Code of Practice	4.02

Through self-regulation, there is a potential benefit to employment businesses or agencies in providing reassurance to potential work-seekers and hirers through the transparency provided. It is unclear whether the recruitment sector generally could benefit through an increase in business activity from a rise in trust in the sector, if the majority of firms in the sector undertook transparent self-regulation. Any impact could possibly see enterprises that self-regulate taking a greater share of existing business from those that don't, incentivising firms to carry out transparent self-regulation. We have not attempted to monetise any potential benefits to business from self-regulation.

#### Costs: work-seekers

Option 2 is aimed at ensuring that employment businesses and agencies are restricted from charging fees to work-seeker, and that a work-seeker will get paid for work done, will not suffer detriment if they move between jobs and will be able to assert their rights. This proposal places no additional action or requirement upon the work-seeker. On this basis, it is not envisaged that option 2 should result in any transition costs or ongoing costs for work-seekers.



### Benefits: work-seekers

The reduction in regulations should enable employment businesses and agencies to operate more flexibly and efficiently, enabling them to provide a better service to work-seekers as well as hirers. Option 2 may therefore lead to improved options and opportunities available for work-seekers.

### Costs and benefits: Exchequer

The reduction in regulations proposed under option 2 should not lead to any ongoing costs or benefits to the Exchequer. However, some transition costs are expected, resulting from drafting guidance for and publicising the new regulatory framework.

Government encouragement of employment agencies and businesses to self-regulate may involve some costs (for instance in terms of provision of guidance). The extent of any cost is related to how the Government decides to promote self-regulation to the recruitment sector. This is one of the areas being consulted on.

## **Consultation questions on changes to the regulatory framework**

The consultation asks a number of questions relating to the proposed reduced regulatory framework, and these are listed below:

1. a) Do you agree with the four outcomes that the Government believes should be achieved by the recruitment sector legislation (outcomes are listed below)? Yes/No
  - Employment businesses and employment agencies 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
- b) Please give reasons for your answer.
2. a) Are there any other outcomes that you think should be achieved by the new legislation? Yes/No
- b) If yes, please give details on what these are.
3. a) Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees? Yes/No
- b) If you answered yes, in what circumstances do you think agencies should be able to charge fees?
4. a) Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved? Yes/No

- b) Please give reasons for your answer.
5. a) Do you think legislation should require employment agencies to allow work-seekers a cooling off period in situations where fees can be charged? Yes/No
- b) Please give reasons for your answer
6. a) If you answered yes to question 5, do you think there should be one standard cooling off period? Yes/No
- b) What do you think the cooling off period should be?
7. a) Do you think it is necessary to legislate to ensure that there is clarity on who is responsible for paying a temporary worker for the work they have done? Yes/No
- b) Please give reasons for your answer.
8. a) Regulation 6 restricts employment agencies and businesses from penalising a work-seeker for terminating or giving notice to terminate a contract. Do you think that the text of regulation 6 could be improved? Yes/No
- b) Please give reasons for your answer.
9. a) Regulation 10 has the effect of restricting employment businesses from charging unreasonable transfer fees to hirers. Do you think that the text of regulation 10 could be improved? Ye/No
- b) Please give reasons for your answer.

## **Consultation questions on publishing management information and self-regulation**

The consultation also asks some questions (listed below) about employment agencies and businesses publishing management information, and self-regulation more widely.

10. a) Do you think employment agencies and businesses should publish information about their business? Yes/No
- b) Please give reasons for your answer
11. If you answered yes, what information do you think would be of most interest to:
- a) work-seekers?  
b) hirers?
12. a) Do you think it should be compulsory for employment agencies and businesses to publish information about their business? Yes/No
- b) Please give reasons for your answer.  
c) If you answered yes, what information do you think it should be compulsory to publish?
13. a) Do you think trade association codes of practice help to maintain standards in the sector? Yes/No

b) Please give reasons for your answer

14. What other non-regulatory tools could be used to maintain standards in the recruitment sector? Please be as specific as you can in your response.

## Enforcement approaches

Currently, enforcement of the Conduct Regulations is carried out by the Employment Agency Standards Inspectorate (EAS). The EAS investigates complaints of non-compliance received through the Pay and Work Rights Helpline and other sources. It primarily does this via inspections. It also carries out risk based inspections, in line with Hampton principles, targeting businesses most likely to breaching the regulations<sup>17</sup>. It largely achieves compliance by issuing warning letters to employment agencies and businesses, which set out the identified infringements, and require the firm to respond detailing how they have remedied or will remedy them, within a fixed time period. The EAS will follow up to ensure that the infringements have been resolved. If considered proportionate, the EAS can initiate criminal proceedings against employment agencies or businesses. The EAS can also apply to have individuals or corporations prohibited from running an employment business or agency<sup>18</sup>.

The EAS manages to fully recover around 70% of unpaid wages, mostly within the six weeks following the infringement being substantiated. The EAS look to escalate the penalty for firms refusing to pay, but are not always able to pursue prosecutions. In a number of cases, non-payment is due to the business becoming insolvent.

### Option 1:

Under option 1, the current enforcement regime would continue, so there would be no costs or benefits resulting.

### Option 2:

Under option 2, there are two potential enforcement approaches proposed:

- 2a, the current enforcement regime could continue
- 2b, a civil regime enforced by individuals through the Employment Tribunal (ET) system.

Most employment rights are enforced by individuals. The current government approach is to promote the resolution of workplace problems through discussions between the worker and the employer. If that doesn't prove possible, workers can then take their complaints to the Employment Tribunal. However, for the most vulnerable workers, who may be unable to assert their rights themselves, government should directly enforce their employment rights<sup>19</sup>. As noted above, government directly enforces the Conduct regulations through the EAS. However, the Agency Worker Regulations, which came into force in October 2011, use civil individual enforcement through the ET system.

Various changes to the Employment Tribunal system are being planned:

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<sup>17</sup> EAS, Annual Report 2010-11, February 2012, P2 and 6.

<sup>18</sup> EAS, Enforcement Policy Statement, March 2010.

<sup>19</sup> BIS, Flexible, effective, fair : promoting economic growth through a strong and efficient labour market, October 2011, <http://www.bis.gov.uk/assets/biscore/employment-matters/docs/F/11-1308-flexible-effective-fair-labour-market> (accessed 5th october)

- Through the Enterprise and Regulatory Reform (ERR) Bill<sup>20</sup>, the government is looking to promote the resolving of workplace disputes through conciliation. All prospective ET claims will be initially lodged with Acas which will look to explore conciliation between claimant and employer, with the aim of avoiding the potentially costly and time consuming ET process. Potential mechanisms to aid rapid resolution of less complex ET cases are being considered. Acas expect this approach, known as early conciliation, will be introduced in 2014<sup>21</sup>.
- The Ministry of Justice (MoJ) is looking to introduce fees for users of the ET system in the Summer of 2013, enabling the costs of the system to be partially paid for by the users<sup>22</sup>.

## Costs and benefits: current enforcement regime

### Businesses and work-seekers:

There are no anticipated changes to the costs and benefits experienced by businesses or work-seekers if the current enforcement approach continues. Currently, employment businesses and agencies where a potential regulatory infringement has been reported, or where evidence suggests they have a high risk of infringement, will have to bear the cost, in loss of time, of an investigation (probably an inspection). According to the EAS, inspections will typically take between 45 minutes and 3 hours. The inspector can be left to examine the business's records, or the business representative can choose to stay with the inspector while the records are checked. If non-compliance is identified, in rare cases the firm may be subjected to criminal proceedings, or prohibition (in which case external legal representation is likely to be required). Otherwise, businesses will face no cost from this enforcement regime. Anecdotally, the EAS reported that in some cases large recruitment firms might refer infringement cases to their in-house lawyers, while some sector trade associations (TAs) have legal advisors that their members can utilise. However, for firms without in-house lawyers or TA membership, it is possible that in some cases external advice will be paid for (though EAS has not been aware of this).

On the basis of the above paragraph, it is assumed that the cost of the current enforcement regime to employment businesses and agencies is negligible, and non-compliant businesses only pay money that they owe. Monetised costs or benefits to businesses of the change options considered below are relative to assumed zero costs to businesses of the current regime.

Work-seekers, and others, are able to contact the Pay and Work Rights Helpline free of charge via the internet or a free phone number<sup>23</sup>, to identify a potential infringement by an employer (etc). If there is a potential infringement of a work-seeker's rights under the Conduct Regulations, the EAS will investigate, and will require the employment agency or business to rectify the infringement (and pay any money owed) if the regulations are found to be breached.

### Exchequer:

The Exchequer currently funds the EAS and the PWRH. Given the proposed reduction in regulations under Option 2, there may be the potential for savings in the costs to the Exchequer of the EAs and PWRH over the period that the policy is expected to impact. However, these are subject to operational considerations.

<sup>20</sup> BIS, ERR Bill: Employment factsheet, June 2012, <http://discuss.bis.gov.uk/enterprise-bill/files/2012/06/Employment-Fact-Sheet-13-06-2012.pdf> (accessed 5th October 2012)

<sup>21</sup> Acas, Demands for early intervention in workplace disputes continues to rise, July 2012 <http://www.acas.org.uk/index.aspx?articleid=3841> (accessed 26/10/2012)

<sup>22</sup> Ministry of Justice, Charging Fees in Employment Tribunals and the Employment Appeal Tribunal, July 2012, <https://consult.justice.gov.uk/digital-communications/et-fee-charging-regime-cp22-2011> (accessed 5th October 2012)

<sup>23</sup> [http://www.direct.gov.uk/en/D11/Directories/DG\\_177940](http://www.direct.gov.uk/en/D11/Directories/DG_177940) (accessed 5th October 2012)

## Costs and benefits: civil individual regime

This option would bring the enforcement regime in line with that used for the Agency Workers Regulation. Work-seekers and workers employment rights under the proposed conduct regulations in option 2 would be enforced by the individuals affected, using the Employment Tribunal system. There would be no direct government enforcement of these regulations. As noted above, the early conciliation process will be introduced in 2014. This will require potential claimants to complete a statement of intent to claim, which will then initiate the early conciliation process. The BIS/Acas early conciliation model estimates that around 25% of potential claims (regardless of track<sup>24</sup>) will not progress from early conciliation into full claims. The 2011/12 HMCTS Employment Tribunal and EAT Statistics show that around 19% of employment tribunal cases go to a full hearing.

It is estimated that 156 cases per year would be taken into the ET system under the reduced set of regulations proposed in Option 2. This was obtained as follows; The proportion of infringements by regulation identified by the EAS following complaints in 2011-12, is multiplied by the estimated number of cases over the year, to provide an estimated number of cases in 2011-12 for each regulation. By summing the number of cases estimated for the regulations that will be carried forward in principle under Option 2, we can estimate the annual number of cases that will go on to the ET system.

### Transition costs: businesses and work-seekers

As it is assumed that each time a business goes through a dispute they will be familiarising themselves with the process there will be no one-off transition costs. The general process of familiarisation of claimants and employers is captured in the assessments of ongoing costs of employment tribunals to these parties.

### Ongoing costs: businesses and work-seekers

## Early conciliation:

It is estimated that, as these represent cases with substantiated complaints, that all 156 will go forward to the early conciliation stage, following the potential claimant completing a statement of intent to claim.

The costs of early conciliation for a worker are based on the time spent on conciliation, and the median hourly wage of an employee. The latter is taken from 2011 Annual Survey of Hours and Earnings<sup>25</sup>, uprated to 2012 prices using the Average Weekly Earnings survey<sup>26</sup>. It is estimated that workers spend a median three-quarters of an hour in completing the statement of intent to claim. Acas research on pre-claim conciliation, which is a precursor of early conciliation, indicates that claimants spent a median 5.7 hours on conciliation<sup>27</sup>. The estimated costs of early conciliation for workers is set out in table 5 below.

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<sup>24</sup> HMCTS allocate employment tribunal claims to one of three tracks (fast, standard or open) depending on the jurisdictions covered by the claim, and therefore the relative straightforwardness of the issues likely to be raised in the case.

<sup>25</sup> ONS, 2011 Annual Survey of Hours and Earnings (SOC 2000), November 2011

<sup>26</sup> ONS, Average Weekly Earnings, produced monthly as part of the Labour Market Statistics release.

<sup>27</sup> Acas, Evaluation of the first year of Acas's Pre-Claim Conciliation Service, September 2010, p41.

**Table 5: Estimated median annual costs of early conciliation to workers, 2012 prices**

A: Median hourly wages: employees (2012 prices)	£11.36
B: Median hours to complete statement of intent	0.75
C: Median hours spent in conciliation	5.7
D: Number of cases per year	156
Total : (A x (B+C) x D) to nearest £1,000	£11,000

For employers, the estimated costs of early conciliation are based on the median hourly earnings of personnel, training and industrial relations managers (taken from ASHE 2011 and uprated to 2012 prices using Average Weekly Earnings data). This is multiplied by the median time taken per case by employers on pre-claim conciliation (6 minutes for the initial call from Acas, and 8 hours for the conciliation process<sup>28</sup>). In addition, there is the median expenditure on advice and representation during the early conciliation process. The estimated annual cost to businesses of early conciliation is shown in table 6 below.

**Table 6: Estimated annual costs of early conciliation to businesses, 2012 prices**

A: Median hourly wages: employees (2012 prices)	£27.75
B: Median hours to complete statement of intent	0.1
C: Median hours spent in conciliation	8
D: Median costs of advice and representation	£290.14
E: Number of cases per year	156
Total : ((A x (B+C) + D) x E) to nearest £1,000	£84,000

## Employment Tribunals:

As noted above, the early conciliation model estimates that 75% of the cases will continue into an employment tribunal claim. Some claimants or employers won't be willing to consider conciliation, and some cases will not be resolved in early conciliation. There are a series of potential outcomes for ET1 claims: resolved through further Acas conciliation, private settlement, withdrawal, early dismissal or default judgements, or upheld or dismissed at a full hearing.

The median unit cost of employment tribunal claims to workers is estimated from data from the 2008 Survey of Employment Tribunal Applications (SETA)<sup>29</sup>. This enables median estimates for time spent on cases, costs of external advice and representation and travel and communication. The median figures used the overall medians, covering all the potential outcomes. As above, to estimate the claimants' loss of earnings due to time spent of ET cases, the median hourly wages of total employees is used (from ASHE, uprated to 2012 using AWE). The estimated median costs of advice and representation, and travel and communication costs, are uprated to 2012 prices using RPI. The estimated median unit costs for claimants from an employment tribunal claim are set out in table 7 below.

**Table 7 median unit costs to worker of employment tribunal claim (across all outcomes), 2012 prices**

Time spent on case	£636
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<sup>28</sup> Acas, Evaluation of the first year of Acas's Pre-Claim Conciliation Service, September 2010, p42.

<sup>29</sup> M. Peters et al, Findings from the Survey of Employment Tribunal Applications, 2008, BIS/BMRB, March 2010.

Costs for advice and representation post ET1	£763
Costs incurred for travel, communication	£21
<b>Total cost</b>	<b>£1,419</b>
<b>Total cost rounded to nearest £100</b>	<b>£1,400</b>

A similar approach, based on data from SETA 2008 and estimated employer labour costs per hour, is used to estimate the median unit cost of an employment tribunal claim to an employer. To estimate employers' labour costs from ET cases, ASHE 2011 data for both corporate managers and senior officials, and personnel, training and industrial relations personnel are used. This is because SETA divides the time spent by employers on ET cases between directors and other staff. For employers' costs, estimated employers' non-wage labour costs are added at 24%. The estimated median unit costs for employers from an employment tribunal claim are set out in table 8 below.

**Table 8 median unit costs to business of employment tribunal claim (across all outcomes), 2012 prices**

Time spent on case (Directors and senior managers)	£1,234
Time spent on case (other staff)	£444
Costs for advice and representation post ET1	£2,225
<b>Total cost</b>	<b>£3,903</b>
<b>Total cost rounded to nearest £100</b>	<b>£3,900</b>

As noted above, 75% of cases routed through early conciliation are estimated to continue into ET claims: this would result in 117 claims relating to the new set of regulations under Option 2. Applying this number to the median unit costs, the estimated annual costs of ET claims for workers and businesses resulting from the proposed new regulations are shown in table 9.

**Table 9: Estimated annual cost from ET claims to businesses and workers , 2012 prices (to nearest £1,000)**

	<b>Annual cost (£)</b>
Businesses	456,000
Work-seekers	164,000

The estimated annual cost to businesses and work-seekers, based on the above information, and assuming zero cost for businesses and work-seekers under the current enforcement approach, is shown in the table 10 below.

**Table 10: Estimated annual cost to businesses and workers of change to an individual, civil enforcement approach using the ET system, 2012 prices, £s (to nearest £1000)**

	<b>Early conciliation</b>	<b>ET claims</b>	<b>total</b>
Businesses	84,000	456,000	541,000
Workers	11,000	164,000	175,000

## **Additional ongoing costs (not monetised):**

### **Fees:**

There will also potentially be fees required for making an ET claim. MoJ will charge claimants £160 or £250 for a full (level 1 or level 2) ET claim to go forward following unsuccessful pre-claim conciliation by Acas. Level 1 claims include those relating to non-payment of wages, and breach of contract, while level 2 claims include claims relating to written pay statements. If a full ET hearing is required, the claimant will pay a further £230 for Level 1 cases, and £950 for Level 2

cases. If claimants are successful, then the ET judge may reimburse the claimant, with the respondent to the claim paying the fee. Therefore, this will add additional cost to businesses or work-seekers. MoJ is currently establishing a fee remission process that will ensure that those not able to pay will not be charged a fee to make a claim<sup>30</sup>.

As well as the up-front costs that the work-seeker is likely to face, there is also likely to be more of a delay between the initiation of a claim and the receipt of any money awarded. MoJ report that the average time of an ET claim from receipt to decision is 24 weeks<sup>31</sup>.

#### Penalties:

The ET system enables claimants to obtain an award above that of the amount of money owed by an employer. Therefore, a move to a civil enforcement regime carried out by individuals through the ET may increase the amount that businesses have to pay per case. We have not attempted to monetise this additional amount, as there is no readily available information about the proportion of ET awards that is penal.

#### Appeals:

Potentially, some ET claims brought under the new regulations in Option 2 could lead to ET appeals. However, only a small percentage of claims verdicts are appealed, and there is no published evidence on the number of claims relating to the recruitment sector (for instance under the AWR) have resulted in appeals. Therefore these potential costs have not been monetised.

## Ongoing benefits: businesses and work-seekers

There will be increased clarity for both businesses and work-seekers, as the proposed new regulations will be enforced through the ET system, in line with the AWR.

For work-seekers, there is the potential benefit of receiving an award greater than the amount of unpaid wages. There is no available information about the extent of additional compensatory elements to ET or small claims awards, so no attempt has been made to monetise this potential benefit.

Work-seekers might also benefit by being able to link ET claims across a number of jurisdictions, for instance discrimination, if they have evidence that their employment rights have been abused in addition to their rights set out in the new recruitment sector regulations.

#### Transition costs: Exchequer

If government enforcement was replaced by individual civil enforcement, then there would be initial transition costs to the Exchequer in relation to re-employing or making redundant existing EAS staff and preparing the ET system to take on cases relating to the new regulations. This may involve judicial training, and guidance. At this stage, it is not possible to monetise these potential costs, but these are likely to be relatively small.

#### Ongoing costs: Exchequer

The early conciliation model provides the following estimates, set out in table 11, to produce the unit costs to Acas of carrying out an early conciliation case. The unit labour costs are based on ASHE 2011 median hourly wages for all employees, uprated to 2012 prices using AWE, and

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<sup>30</sup> Ministry of Justice, Charging Fees in Employment Tribunals and the Employment Appeal Tribunal, July 2012, <https://consult.justice.gov.uk/digital-communications/et-fee-charging-regime-cp22-2011> (accessed 5th October 2012)

<sup>31</sup> MoJ, Making a claim guidance for Employment Tribunal, <http://www.justice.gov.uk/tribunals/employment/claims/making-a-claim> (accessed 8th October 2012)



plus 24% non-wage labour costs. It is assumed that around three-quarters of cases resulting from the new regulations will be fast track and a quarter would be standard track.

**Table 11 unit costs to Acas of an early conciliation case**

Median hourly labour costs	£14.08
Time spent processing statements of intent (hours)	0.5
Early conciliation by track:	
Fast track	£120
Standard track	£160
Average (based on 75% fast and 25% standard)	£130

As it is estimated that on average there will be 156 cases going through early conciliation, this enables annual Acas costs resulting from individual enforcement of Option 2's new regulations to be estimated. These are set out in table 12 below:

**Table 12: Estimated annual costs to Acas of early conciliation, 2012 prices (to nearest £1,000)**

A: cost of processing statement of intent forms	£1,000
B: cost of early conciliation	£20,000
Total : (A + B)	£21,000

As noted above, it is estimated that 117 cases on average each year will go on to a full ET claim. Of these it is assumed that all will go on to the interlocutory stage, with 19% going on to a full hearing.

The 2012 MoJ final impact assessment on ET fees<sup>32</sup> estimated the following unit costs for ET stages, for fast and standard track cases (and average unit costs based on an assumed 75% of cases brought under the new regulations being fast track, and 25% being standard track).

**Table 13 unit costs to HMCTS of an ET case, £ 2012 prices**

Processing ET1 form	£390
Fast track	£390
Standard track	£420
Average (based on 75% fast and 25% standard)	£398
Interlocutory stage	
Fast track	£490
Standard track	£890
Average (based on 75% fast and 25% standard)	£590
Full Hearing	
Fast track	£760
Standard track	£2,890
Average (based on 75% fast and 25% standard)	£1,293

Based on 117 ET1 forms being processed, and 117 cases reaching the interlocutory stage, with 22 going on to a full ET hearing, the average annual costs to HMCTS of moving to individual enforcement of the new regulations under Option 2 is estimated in table 14 below:

**Table 14 unit costs to HMCTS of an ET case, £ 2012 prices**

<b>Processing ET1 form</b>	£398 x 117
Sub-total (to nearest £1000)	£47,000

<b>Interlocutory stage</b>	£590 x 117
Sub-total (to nearest £1000)	£69,000
<b>Full Hearing</b>	£1,293 x 22
Sub-total (to nearest £1000)	£28,000
<b>Total (to nearest £1000)</b>	<b>£144,000</b>

The overall estimated combined annual cost to the Exchequer is shown in table 15 below.

**Table 15: estimated annual cost to Exchequer of moving to individual enforcement (£m, 2012 prices)**

Cost to Acas	0.02
Cost of HMCTS	0.14
<b>Total cost</b>	<b>0.17</b>

#### Ongoing benefits: Exchequer

The current cost of direct government enforcement can be estimated at the annual cost of the EAS, for which the budget in 2011/12 was £0.78m, with a recorded spend of £0.70m. If there was to be no direct government enforcement, then this expenditure would no longer be required. The overall estimated net benefit per year is shown in table 8 below.

**Table 16: estimated annual benefit to Exchequer of moving to individual enforcement (£m, 2012 prices)**

Outturn expenditure of EAS	0.70
<b>Total benefit</b>	<b>0.70</b>

#### **Consultation questions on enforcing the proposed new regulations**

The consultation asks a number of questions about enforcement of the proposed regulations, and these are listed below:

15. a) Do you think that the Government should enforce the recruitment sector legislation?  
Yes/No
  - b) Please give reasons for your answer.
16. a) Do you think that prohibition orders should be included in the new enforcement regime?  
Yes/No
  - b) Please give reasons for your answer.
17. a) ) Do you think individuals should be able to enforce their rights at an Employment Tribunal? Yes/No
  - b) Please give reasons for your answer.
18. What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

19. a) Do you think that the Government should proactively publish the findings of investigations that have been carried out, including the trading name of each employment agency/business, and listing the infringements to the legislation?
- b) Please give reasons for your answer

### **Consultation questions on record keeping by employment agencies and businesses**

The consultation questions relating to record keeping are listed below:

20. a) Do you think it is necessary to legislate to require employment agencies and businesses to keep records to demonstrate that they have complied with the regulatory requirements? Yes/No
- b) Please give reasons for your answer
21. What records do you think that employment agencies and employment businesses should be required to keep relating to:
- a) work-seekers?
  - b) hirers?
  - c) other employment agencies/employment businesses?

## **Sensitivities**

The monetised benefits for businesses due to the reduced regulations assume that the administrative costs of the new set of regulations under Option 2 will impose the same administrative burdens as those regulations they will replace. It may be that in drafting a new set of regulations to reflect the underlying principles of some of the existing regulations, there will be changes to the administration activity required to comply (this could increase, or decrease, the annual benefits resulting from reduced regulation proposed in Option 2).

Businesses are expected to continue some administrative activities that are no longer regulated, in order to provide the services required by hirers and work-seekers. It may be that they are able to find more cost-effective ways of carrying out these activities, relative to the approaches imposed by regulation. This would lead to the level of benefits resulting from Option 2 being greater than estimated, where it is assumed that some previously regulated business activity would continue after deregulation.

The assumption that the cost to employment businesses and agencies of the existing enforcement regime is negligible is primarily based on anecdotal evidence from the EAS. It seems reasonable based on the average length of inspections, and the high level of compliance within the required time periods: it implies that generally businesses will actively move to compliance when found to be in breach of the regulations. However, in the relatively few number of cases that are more contentious, firms may incur some costs from seeking advice and spending time in defending their position.

The estimate for the number of individual claims being taken to the Employment Tribunal system (early conciliation and ET claims) is based on the number of cases in which complaints resulted in EAS identifying regulatory infringements – so therefore this is limited to cases which may be expected to succeed, and where, currently, the worker is willing to complain. It also

assumes that, in each of these cases only one worker was affected (or, if more than one, that a multiple ET claim would result). The number of cases may be higher:

- some complaints are not substantiated by the EAS, so under the ET system the worker may make a claim (as the Pay and Work Rights Helpline referred the claim through to the EAS)
- a number of infringements in areas that would be regulated under Option 2 were identified by the EAS when conducting inspections via their risk based approach, rather than being initiated by complaints. If workers in high risk sectors/locations begin to claim more often under an individual enforcement regime, the number of cases, and estimated costs from a change in enforcement approach, would rise.

However, if the amount of arrears being claimed is relatively small, workers may potentially be put off by the initial cost of ET claims, and the length of time that claims may take to be processed. Early conciliation may reduce the risk of these workers not proceeding with an initial complaint.

## Risks: reduction in regulations

The reduction in detail of the terms and conditions that an employment business or agency has to agree with a work-seeker may present a risk that some work-seekers could be unreasonably charged for goods and services additional to the basic work-finding service provided:

- The current regulations allow the charging of fees for goods and services provided in addition to work-finding, such as training or help with CVs. Regulation 13 currently requires an employment agency or business to notify the work-seeker whether the service they are offering is a work-finding service (for which they cannot charge a fee) or any other service or goods (for which a fee may be charged). Under option 2, there would be no requirement for employment agencies or businesses to provide the work-seeker with information about fees for additional goods and services were derived. This may put work-seekers at risk of being charge unreasonably, if they can't be clear what the fees are for. However, Option 2 would retain the protection that employment businesses or agencies could not make the work-finding service dependent on purchase of other goods or services, which should mitigate against this risk. There is some evidence that overcharging has occurred under the current regulations;
  - In 2011-12, the latest financial year for which figures are available, the EAS identified 103 breaches of regulation 13 (39 following a complaint about the recruitment firm)<sup>33</sup>.
  - In 2006, DTI published a report, "Success at work: protecting vulnerable workers, supporting good employers", which outlined that some recruitment sector firms made provision of work assignments conditional on work-seekers taking additional goods or services, for which they often overcharged<sup>34</sup>.
  - The 2012 National Minimum Wage report by the Low Pay Commission identified, not specifically about temporary agency workers, that there was evidence that migrant workers were at risk from unauthorised deductions from wages<sup>35</sup>. National minimum wage legislation does provide some protection so that workers should be paid the legal minimum. It is a basic principle (with limited exceptions) of the national minimum wage that wages should be paid in money and that the employer should not be able to make compulsory deductions from pay for goods and services if these would bring the worker's pay below the statutory minimum. If goods and services have been purchased, the worker can pay them after being paid.

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<sup>33</sup> EAS administrative data

<sup>34</sup> DTI, Success at work: protecting vulnerable workers, supporting good employers, March 2006, p18.

<sup>35</sup> Low Pay Commission, National Minimum Wage 2012 Report, March 2012, p106.

[http://www.lowpay.gov.uk/lowpay/report/pdf/8990-BIS-Low%20Pay\\_Tagged.pdf](http://www.lowpay.gov.uk/lowpay/report/pdf/8990-BIS-Low%20Pay_Tagged.pdf)

- As also noted above, Option 2 would remove the obligations on employment businesses and agencies contained in regulation 24. These obligations require that where a work-seeker has been assigned a job away from home, employment businesses and agencies provide details of any travel arrangements and costs, and ensure the return home from an assignment. If accommodation is required, the recruitment firms must provide clear details about accommodation arrangements including costs. Also, if the work-seeker requires a loan from the recruitment firm for travel and/or accommodation expenses, the regulation states that the loan should be interest free. The removal of these regulatory requirements may mean that a work-seeker is at risk of not being clear about the costs of arranged travel and accommodation, and, if requiring a loan to get to their work assignment, of being charged interest (potentially at excessive rates). The 2006 DTI report on vulnerable workers mentions evidence of migrant temporary workers being charged interest on loans by employment businesses<sup>36</sup>. However, in 2011/12, the EAS did not identify any breaches of regulation 24<sup>37</sup>.

There is a potential risk that employment businesses and agencies, if they cut back on administrative activity in line with the proposed reduction in regulation, may place work-seekers into unsuitable jobs, or jobs where there is a health and safety risk. It is expected that this risk should be relatively small: due to market pressure from hirers, employment businesses and agencies are likely to continue to undertake the administration to ensure that suitable candidates are supplied to hirers. Where necessary, recruitment firms will also be likely to continue to make work-seekers aware of, and prepared for, any health and safety risks (as suggested by the REC's Code of Practice).

## Risks: change in enforcement regime

There is a risk that a work-seeker, even if successful in gaining an award, will not end up being paid. A survey of successful claimants conducted by IFF Research Ltd for MoJ in 2008<sup>38</sup> found that 39% hadn't received any payment at least four months after the award (31% hadn't received any a year or more after the award). Claims under £500 were more likely to be paid in full, as were claims against large businesses. Among the key reasons for not receiving any of the money awarded, 39% of unpaid claimants identified that the firm no longer existed, while in 29% of cases the employer had refused to pay. Therefore, as with those cases where EAS has not achieved payment of arrears, a proportion will be due to businesses becoming insolvent.

In 2010, a new fast track Acas and ET enforcement scheme has been introduced, which has simplified the previous approach used to enforce awards: the same mechanism, enforcement by the individual via the County Court system, still applies<sup>39</sup>. The current system involves a High Court Enforcement Officer (HCEO) being assigned to a claimant at the beginning of the enforcement process, with an upfront fee of £60 potentially required. The HCEO is paid through additionally collecting a small percentage of the award from the employer<sup>40</sup>. Currently, there is no analysis available on whether the fast track scheme has improved the proportion of awards that are paid.

<sup>36</sup> DTI, Success at work: protecting vulnerable workers, supporting good employers, March 2006, p18.

<sup>37</sup> EAS administrative data

<sup>38</sup> MoJ/IFF Research Ltd, Research into enforcement of employment tribunal awards in England and Wales, May 2009.

<sup>39</sup> The Sherriff's Office, Step-by-step guide to enforcing an employment tribunal award,

[http://thesheriffsoffice.com/articles/step-by-step\\_guide\\_to\\_enforcing\\_an\\_employment\\_tribunal\\_award](http://thesheriffsoffice.com/articles/step-by-step_guide_to_enforcing_an_employment_tribunal_award) July 2011 (Accessed 19/10/2012)

<sup>40</sup> HM Courts & Tribunal Service, Form EX 727 – I have an employment tribunal or an employment appeal tribunal award but the respondent has not paid – How do I enforce it?, 2011.

## Annex A

### Breakdown of cost to business by regulation

These costs are based on estimates produced by ORC International as part of their 2008 Employment Law Admin Burdens Survey<sup>41</sup>. Where the ORC International estimates cover more than one regulation, the figures have been distributed to specific regulations using proportions calculated from the PWC estimates produced for the Administrative Burdens Measurement Exercise in 2005<sup>42</sup>. The figures have been updated to 2012 prices using the Consumer Prices Index.

**Table 1a. estimated administrative cost to business of complying with  
With the Conduct Regulations, 2012 prices**

<b>Regulation</b>	<b>Cost to employment agency/business (£000s)</b>
1 – Citation and commencement	0
2 – Definitions of “hirer”, “work-seeker” , “work-finding services” etc	0
3 – The meaning of “connected”	0
4 – Transitional and Saving Provisions and Revocation	0
5 – Restriction on requiring work-seekers to use additional services (relationship with AWD)	0
6- Free movement of agency workers (AWD)	0
7 – Restriction on providing work-seekers in industrial disputes	0
8 – Stops employment agencies paying work-seekers on behalf of the hirer	0
9 – Restriction on employment agencies and employment businesses purporting to act on a different basis	0
10 – restriction on charges to hirers (AWD)	1,629
11 – Stops an employment business or agency entering into a relationship on behalf of both the hirer and the work-seeker	262
12 – Prohibits employment business withholding payment to agency workers	0
13 – notification of charges and terms of offers	596
14 – requires employment businesses to agree terms with work seekers	3,619
15 – details content of contract between work-seeker and employment business	816
16 – requires agencies to obtain agreement to terms end content of terms with work-seekers	816
17 – employment businesses to obtain terms with hirers	491
18 – Information to be obtained from a hirer	1,862
19 – Confirmation of work-seeker’s identity	184

<sup>41</sup> E. Lambourne et al, Employment Law Admin Burdens Survey 2008 – technical Summary, BIS/ORC International December 2008

<sup>42</sup> DTI, Administrative Burdens Measurement Exercise Final Report, June 2006.

qualifications etc.	
20 – Steps to be taken for protection for the work-seeker and hirer	2,170
21 – Provision of info to work seekers and hirers	18,901
22 – Relates to working with vulnerable persons	515
23 – Situations where more than one employment agency or business is involved	999
24- Situations where work seekers are provided with travel or required to work away from home	206
25 – Applies to client accounts	428
26 – Circumstances in which fees may be charged (entertainment and modelling sector)	1,808
27 - Applies to advertisements	1,531
28 - Confidentiality	0
29 – Imposes detailed record-keeping requirements	476
30 – Civil liability	0
31 – Effect of prohibited or unenforceable terms and recoverability of monies	0
32 – Allows work seekers to be limited companies and to opt out of the Conduct Regulations	1,744
33 – Electronic and other communications	0
Schedule 1 – Defines transitional period following implementation of the regulations	0
Schedule 2 - Client accounts	400
Schedule 3 – Occupations where fees can be charged (entertainment and modelling sector)	0
Schedule 4 - Information an employment agency/business needs to record relating to work seekers	0
Schedule 5 - Information an employment agency/business needs to record relating to hirers	0
Schedule 6 - Information an employment agency/business needs to record relating to other employment agencies or employment businesses that are involved	0
<b>Total</b>	<b>39,452</b>

### Equality Impact Test

#### Summary

The policy objective of the consultation is to minimise the regulatory burden on businesses while ensuring that workers and work-seekers remain protected. Therefore, it is not expected that there will be a negative impact on temporary agency workers or work-seekers looking for permanent placements via employment agencies.

One of the enforcement approaches proposed in Option 2, individual civil enforcement using employment tribunals offers some benefits, as well as some potential costs (though the latter will be mitigated by early conciliation, and through fee remittance for low-paid workers etc).

If groups with the protected characteristics listed under the Equality Act 2010 comprised a bigger proportion of either temporary agency workers relative to others in employment or those getting permanent placements through employment agencies, relative to those getting permanent jobs through other avenues, then they might be said to be disproportionately affected by any impacts to those groups due to the policy proposals.

Existing data sources available do not enable the comprehensive measurement of temporary agency workers, or work-seekers looking for permanent placements via employment agencies. The Labour Force Survey enables the characteristics of these two groups to be measured, but doesn't fully cover either of the populations, getting close to two-thirds of the temporary agency workers and forty percent of those looking for permanent placements.

The LFS suggests that some of the protected groups comprise a statistically significantly greater share of temporary agency workers compared to their share of the rest of the workforce:

- Those aged 16-24
- Men
- Sikhs and 'other religions not specified'
- Indians, 'Black African/Caribbean/Black British', 'other Asian', 'Mixed/multiple ethnic background', 'other ethnic background' – also people from the EU16, EU 8 and Bulgaria and Romania.

For work-seekers looking for permanent jobs, analysis of the LFS suggests that some of the protected groups comprise a statistically significantly greater proportion of those doing so via employment agencies when compared with other routes<sup>43</sup>:

- Men
- People from the EU 8

However, the data from the LFS also suggests that some of the protected groups (for instance women and people with disabilities) are statistically significantly underrepresented as a proportion of temporary agency workers relative to the proportion they comprise of the remaining workforce. This raises a possibility that the recruitment sector is currently not operating as effectively for some groups with protected characteristics as a way of obtaining

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<sup>43</sup> The LFS question asks employees who obtained their current job in the previous 12 months if they obtained their current job: a) by applying to a job application, b) through a jobcentre/jobmarket or Training and Employment Agency Office, c) through a Careers or Connexions Office, d) through a job club, e) through a private employment agency or business, f) through hearing from someone who worked there, g) by applying directly or h) some other way.



work, or changing jobs, as it does generally. The consultation includes the proposal that employment agencies and businesses will be encouraged to make available their equalities policies as part of their published literature (for instance on their website).

### Policy objective

Government intervention is necessary to reduce the regulatory burden being placed on employment businesses and agencies by the current legislation. Our vision for the recruitment sector is that it will be regulated by the simplest regulatory framework possible, allowing recruitment firms to lay an active role in developing their own methods of maintaining standards so they can compete for work seekers and hiring companies. However, to ensure that the labour market remains fair as well as flexible, growth, we also aim to maintain key protections to workers. Under Option 2, the regulations will continue to ensure that:

- Employment businesses and employment agencies 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 employment firms should not hinder movement of individuals 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

To achieve our vision we would replace the Employment Agencies Act 1973 and the Conduct Regulations with new legislation which would focus on the four outcomes above. The Government would only legislate in these four areas, freeing employment agencies and businesses from additional regulation and allowing them to operate in the way that is best for them.

The Government is also looking to encourage transparency across the recruitment sector and is consulting on the proposal that employment agencies and businesses should publish information on the following:

- Feedback/reviews from work-seekers and hirers;
- The type of occupational sector that the agency/business operates in;
- Size of the business; staff numbers and locations;
- Number of jobs/temporary placements available
- Number of work-seekers available
- Average length of time it takes to fill a vacant post
- Average length of placements (employment businesses only)
- Number of payroll errors (employment businesses only)
- Operation of client account (for entertainment and modelling)
- Equalities policies

The new regulations would not cover most of the detailed agreements on terms and conditions between hirers and recruitment sector enterprises – which are currently regulated. This would cover areas such as the recruitment firm being required to obtain health and safety information from the hirer and informing work-seekers, and the recruitment firm making criminal record bureau checks. Also, employment agencies and businesses would be able to provide simplified contracts to workers just covering key information, including the pay rate and how and when payment will be made.

The requirements of the labour market (that is, from hirers and work-seekers) and other regulations will mean that some of the activities proposed to be de-regulated will still need to be carried out by employment agencies or businesses, or hiring firms. However, businesses may be able to find more efficient mechanisms to achieve the outcomes required.

The Government is also seeking views on the current government enforcement regime, based on criminal sanctions. An alternative, based on individuals enforcing their own rights at Employment Tribunals, has been put forward for consideration.

### Potential impacts on individuals

Under Option 2 essential protections for work-seekers will be maintained within the new set of regulations. Therefore, it is not expected that there will be any negative impact on temporary agency workers or work-seekers looking for permanent jobs through employment agencies resulting from the regulatory changes. Potentially the reduction in regulations could enable employment agencies to provide a more flexible, adaptable service, which could increase or improve employment opportunities for work-seekers.

Potentially, some temporary agency workers could be at risk from unscrupulous firms who exploit the proposed reduced regulatory requirements in relation to contract details and information provision (in areas like fees charged for additional goods and services, or health and safety). However, these risks are judged to be small. Workers will still be protected under the regulations proposed in Option 2 from an employment agency or business making work-finding services provisional on the purchase of other goods and services. In relation to health and safety issues, hiring firms will also be required to comply with relevant regulations. Also, hirers will want to receive suitable workers, informed and able to deal with any health and safety issues.

There are also options in relation to enforcement of the regulations proposed under Option 2. The no change option, of government enforcement based on criminal sanctions will remain free to use for workers.

The change option is for an individual civil enforcement regime prosecuted through the employment tribunal system. This would bring recruitment sector enforcement in line with that for the Agency Workers Regulations (AWR), making the avenue for pursuing infringement of employment businesses or agencies rights clearer for the worker. Such simplification could have benefits to workers, enabling them to combine any claim related to the new recruitment sector legislation with claims under the AWR or associated claims in other jurisdictions. If the worker's claim is successful, they may be awarded compensation in addition to any money owed. However, there would potentially be a cost to the worker in terms of time working on the case and paying for advice and representation (the estimated median costs for claimants are presented earlier in this impact assessment). The Ministry of Justice are also introducing fees for ET claims, which will add to the burden of those workers pursuing a claim who are not given remission on fees.

One concern might be that vulnerable workers, such as migrant workers with poor English language skills, might be reluctant to pursue employment tribunal claims. The Citizens' Advice Bureau reported to the government's Vulnerable Worker Enforcement Forum in 2008 that "few low paid, low skill workers were prepared to consider a tribunal case". This was because the legalistic system was intimidating, vulnerable workers were reluctant to challenge employers, and there was a feeling that the cost in time wasn't justified in terms of the potential awards<sup>44</sup>. As shown below, some temporary agency operate in low skill, low pay occupations, and workers from the EU 8 and Bulgaria and Romania make up a statistically significantly higher proportion of temporary agency workers than others in employment.

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<sup>44</sup> BERR, Vulnerable Worker Enforcement Forum – Final Report and Government Conclusions, August 2008, p37.

The introduction of early conciliation in 2014, where each case will go initially to Acas, who will offer the parties free conciliation services, may both reduce costs and time spent by claimants, and mitigate the difficulties that vulnerable workers face in relation to employment tribunals.

The deregulatory aspect of the policy proposal is aimed at improving labour market flexibility. The LFS data suggests that some groups with protected characteristics under recent equalities legislation do not make proportionate use of recruitment sector services relative to their representation in the workforce, or the proportion obtaining permanent jobs through other routes. For instance, the LFS figures indicated that women, people with Equality Act disabilities, or people with work limiting disabilities comprised a statistically significantly lower proportion of temporary agency workers than they did of the workforce overall (excluding temporary agency workers). While there are concerns about the coverage of the data, it is nevertheless an issue that should be considered as part of the consultation.

The recruitment sector has made an effort to ensure that it promotes diversity and equality in the workforce. The REC includes a 'respect for diversity' principle as one of its key principles in its Code of Practice. It has also developed a Diversity Pledge alongside Jobcentre Plus for its members to commit to, as well as providing specific guidance to help its members develop the equalities policies<sup>45</sup>. The trade association APSCo similarly has a 'respect for diversity' principle in its Code of Conduct<sup>46</sup>

### Consultation of workers and worker representatives

The consultation process will involve both traditional approaches like stakeholder meetings, and new digital engagement approaches, with the aim of encouraging participation by as wide a range of stakeholders as possible, including workers.

We will also talk to groups representing those with protected characteristics listed under the Equality Act 2010, such as the Business Disability Forum, and industry stakeholders, about the issue of potential lower use of recruitment sector services by some groups with protected characteristics.

### Work-seekers and the recruitment sector

It is difficult to get comprehensive information on the demographics of temporary workers, or work-seekers looking for permanent placements via employment agencies.

## **Temporary workers:**

The most recent specific surveys targeting the employment business sector and the demographics of agency workers were the 2007 Survey of Recruitment Agencies, by BERR, and the REC's 2008 Temporary Agency Workers in the UK study. It was estimated that there were around 1.3 million agency workers in 2007, based on an average of the SORA and the REC's 2006 Industry Census numbers<sup>47</sup>. The REC Recruitment Industry Trends estimated that there were slightly under 1.4 million temporary workers in 2007, and indicates that there were around 1.1 million in 2011/12<sup>48</sup>. In 2011/12, REC identified that temporary placements were spread around a range of occupations, though close to half were in 'other industrial/blue collar', 'secretarial/clerical' or 'technical/engineering' occupations.

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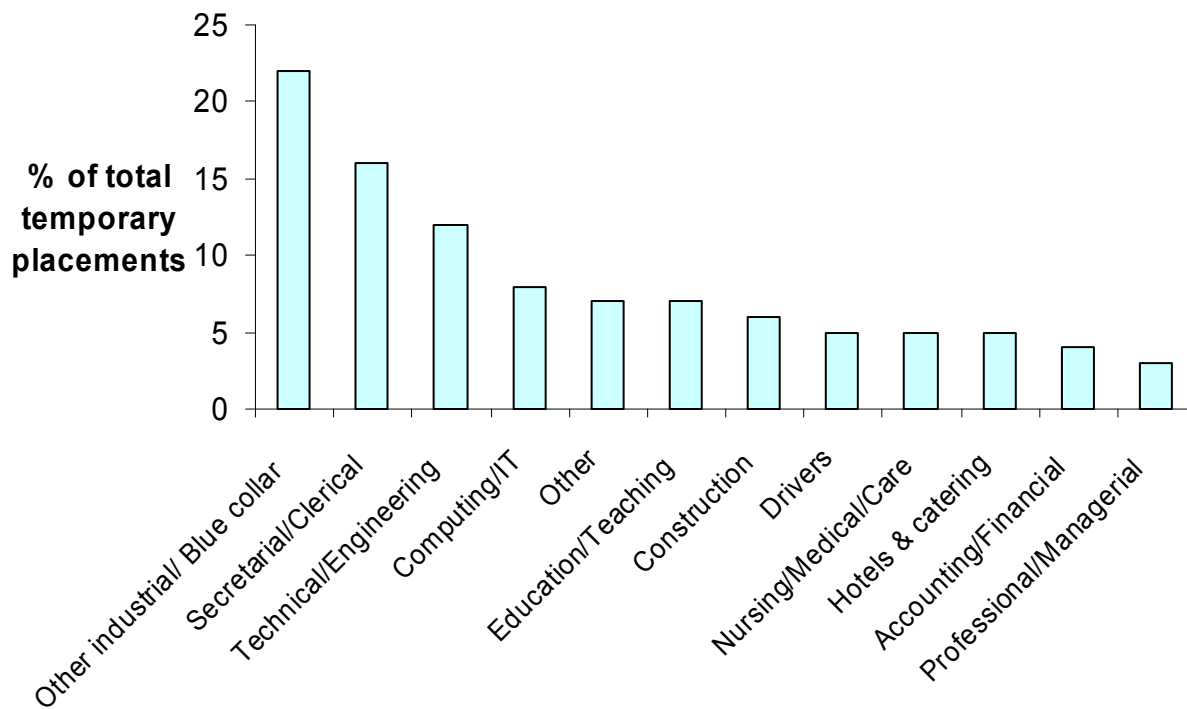
<sup>45</sup> REC website <http://www.rec.uk.com/about-recruitment/diversity> (accessed 29th November 2012)

<sup>46</sup> APSCo website [http://www.apsco.org/Organisation/Code\\_of\\_Conduct/Members\\_code\\_of\\_conduct.aspx](http://www.apsco.org/Organisation/Code_of_Conduct/Members_code_of_conduct.aspx) (accessed 29th November 2012)

<sup>47</sup> BERR, Agency working in the UK: a review of the evidence, October 2008.p1.

<sup>48</sup> REC, Recruitment Industry Trends Survey 2011/12.

**Figure A1 Temporary Placements by Occupation, 2011/12**



Source: REC Industry Trends Survey 2011/12

The Labour Force Survey (LFS) is the standard survey for information on the labour market. It provides the basis of official labour market statistics, and contains a range of variables related to characteristics. However, it was felt that the LFS undercounted temporary agency workers substantially in the past, due to the way in which individuals were asked about the type of temporary work they did, and the fact that individuals may not be sure of their employment status<sup>49</sup>.

In recent years, has developed the set of questions used to enable temporary agency workers to be classified. This has enabled around 700,000 workers to be identified as temporary agency workers within the LFS datasets. This is around two thirds the size of the REC estimate, so the LFS demographic information for temporary workers may be reasonably representative, though there is still a possibility that the coverage is partial, and the LFS data won't capture agency worker characteristics entirely.

Using the four-quarter averages from the most recent four quarterly LFS datasets (Q3 2011 to Q2 2012) the characteristics of temporary agency workers are compared with all others in employment to test whether there are significant differences<sup>50</sup> in the proportions of those with protected characteristics between temporary workers and all others in employment. The readily available information in the LFS does not enable an assessment of the protected characteristics pregnancy/maternity, gender reassignment or sexual orientation.

<sup>49</sup> BERR, Agency working in the UK: a review of the evidence, October 2008, p2

<sup>50</sup> Tested using confidence intervals at the 95% level. For these analyses, a design factor of 1 has been assumed. The LFS sampling approach isn't simple random sampling and therefore produces a clustering effect, and therefore the design factor should vary from 1, depending on the variables being analysed. However, it isn't possible to directly replicate the ONS's approach to calculating design factors, and the ONS only publishes some guideline information on this.

## Age:

According to the LFS, temporary agency workers have a lower age profile than others in employment. Significantly higher proportions of the total number of temporary agency workers are in the 16-24 and 25-39 age groups than among the rest of people in employment: significantly lower proportions of temporary agency workers are in the 40-59 and 60+ age groups. It is assumed that, in general circumstances, young or old workers will be most likely to suffer age discrimination.

**Table 2a Comparison of age demographics of temporary agency workers and all others in employment, Q3 2011 to Q2 2012**

Age groups	16-24	25-39	40-59	60+
others in employment	12.3%	33.2%	45.9%	8.6%
temporary agency workers	18.7%	42.8%	33.1%	5.4%

Data from the 2008 REC study presents a slightly different picture, with 15% of those sampled aged between 16 and 24, and 43% aged 45 and over. However, the small sample obtained for the REC study makes the results less robust.

## Gender:

The LFS suggests that around 59% of temporary agency workers are male, with 41% female. This is a statistically significant difference from the gender split among the rest of those in employment: 53.5% of these are male, with 46.5% female. The 2008 REC study again presents a different picture, suggesting 58% of temporary agency workers were women. However, when the evidence was reviewed in 2008<sup>51</sup> it was considered that the LFS would provide more representative demographic proportions than the REC study.

## Religion:

The only statistically significant differences in the religious composition of temporary agency workers and all others in employment are among Sikhs and those with 'any other religion'<sup>52</sup>. Sikh's comprised 1.2% of temporary agency workers compared to 0.6% of all others in employment in the year to Q2 2012. Those of 'any other religion' comprised 1.6% of those in temporary agency work, compared to 1.1% of all others in employment.

## Ethnicity:

The LFS indicates that Indians, Black African/Caribbean/Black British, other Asian backgrounds (excluding Indians, Pakistanis, Bangladeshis and Chinese), mixed/multiple ethnic backgrounds and other ethnic backgrounds (also excluding Arab and Gypsy and Irish Traveller) all comprise statistically significantly higher proportions of temporary agency workers than they do of all others in employment.

**Table 3a Statistically significant differences of proportions in temporary agency workers and all others in employment by ethnic minority group, Q3 2011 to Q2 2012**

Ethnic groups	Indian	Black African/Caribbean/Black British	Other Asian	Mixed/Multiple ethnic	Other ethnic
others in employment	2.4%	2.2%	1.0%	0.8%	1.0%

<sup>51</sup> BERR, Agency working in the UK: a review of the evidence, October 2008, p8

<sup>52</sup> The LFS question specifies no religion, Christian, Bhuddist, Hindu, Jewish, Muslim, Sikh

temporary agency workers	3.6%	6.6%	1.5%	1.2%	2.1%
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In addition, looking at the LFS's nationality data, workers from the EU 16, the EU8<sup>53</sup> and Bulgaria/Romania comprised a statistically significantly higher proportions of temporary agency workers than all others in employment.

**Table 4a Statistically significant differences in EU groups proportions of temporary agency workers and all others in employment, Q3 2011 to Q2 2012**

EU groups	EU16	EU8	Bulgaria/Romania
others in employment	2.1%	2.1%	0.3%
temporary agency workers	3.7%	12.3%	1.3%

### Disability:

Those without work limiting or Equality Act 2010 Disabilities<sup>54</sup> comprise a statistically significantly higher proportion of temporary agency workers than others in employment, at 87.9% and 85.1% respectively.

In contrast, people with work-limiting disability only, and those with Equality Act disabilities only comprised statistically significantly smaller proportions of temporary agency workers than of others in employment, at 2.0% and 3.1% respectively for individuals with work-limiting disabilities only, and 4.6% and 6.0% for people with Equality Act disabilities only.

The 2008 REC study reported that 7% of temporary agency workers reported "some kind of long term disability or illness that limits the work that they do"<sup>55</sup>, also substantially below the percentage of the workforce comprised of people with disabilities (at around 15%).

### **Permanent placements:**

According to the REC's latest Industrial Trends Survey there were around 550,000 permanent placements by the recruitment sector in 2011/12.

The Labour Force Survey (LFS) enables some analysis of the number of permanent workers who obtained a permanent job through a private sector employment agency in the previous year. However, figures for 2011 and the first two quarters of 2012 show only around 200,000 were placed into permanent employment through an employment agency, around four-tenths of the REC figure. The LFS data may therefore present a partial view of the demographics of those using employment agencies.

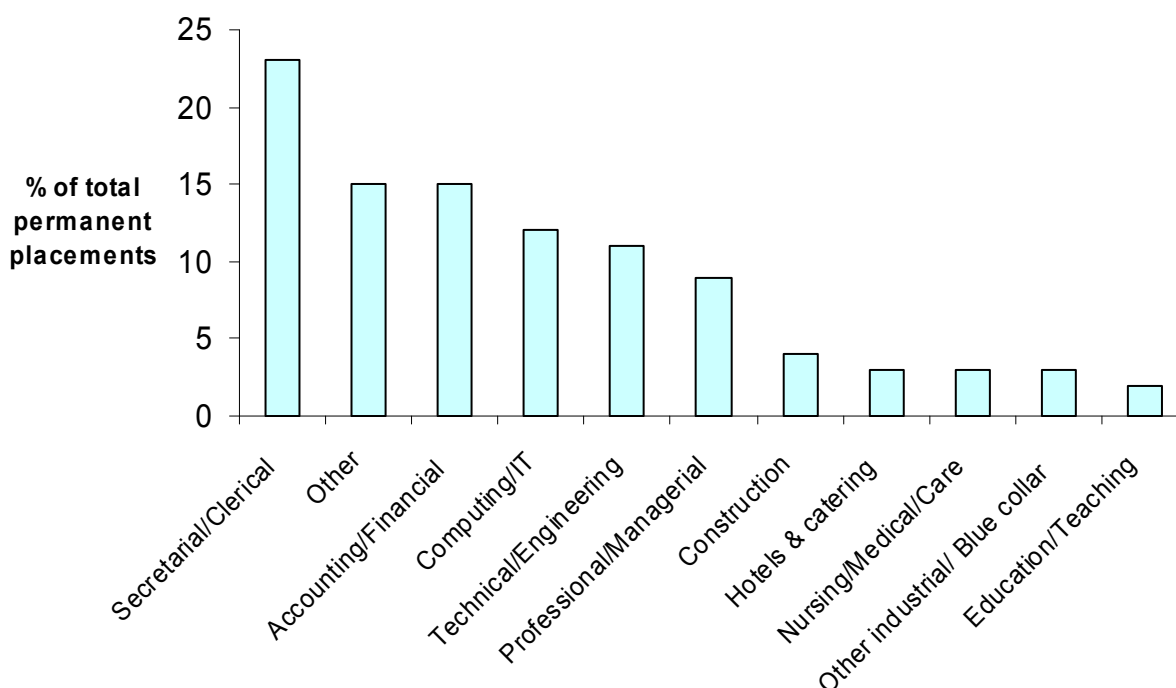
The REC's data indicates that workers get permanent placements through employment agencies in a range of occupations.

<sup>53</sup> The EU8 are Poland, Lithuania, Latvia, Estonia, Hungary, Czech Republic, Slovakia,

<sup>54</sup> Disabilities classified under the Equality Act 2010. The Act merged a number of previous Acts containing equalities provisions, including the Disability Discrimination Act 1995. The question on this subject in the LFS refers to DDA disabilities.

<sup>55</sup> The REC, Temporary Agency Workers in the UK: Understanding their role and expectations, 2008, p5.

**Figure A2 Permanent Placements by Occupation, 2011/12**



Source: REC Industry Trends Survey 2011/12

Using four-quarter averages of LFS data (covering Q3 2011 to Q2 2012) the following differences in characteristics are estimated between employees saying they got a permanent placement through an employment agency, and those who got a permanent placement through a different route, in the 12 months prior to interview.

### Age

For this period, the age distribution of those getting a permanent placement through an employment agency differs from employees getting a permanent placement through another route as follows:

**Table 5a Comparison of age demographics of employees getting permanent placements through a) employment agencies and b) other routes, Q3 2011 to Q2 2012**

Age groups	16-24	25-39	40-59	60+
Other routes	36.3%	36.6%	25.0%	2.1%
Employment agency route	18.8%	48.1%	31.5%	1.5%

16-24 year olds accounted for a statistically significantly lower proportion, and those aged 25-39 and 40-59 statistically significantly higher proportions of those getting permanent placements through employment agencies, relative to other routes to permanent placement. Therefore, younger or older work-seekers are not expected to be disproportionately affected by any of the proposed changes considered here.

### Gender

Over this period, Men accounted for a statistically significantly higher proportion of those getting a permanent placement through an employment agency, at 61%, relative to the proportion getting a permanent placement through different avenues (50.9%).

### Religion

Only among Muslims is there a statistically significant difference between the proportions who got permanent placements through a) employment agencies and b) other avenues in the period covered. While Muslims accounted for 2.1% of those getting a permanent placement via an employment agency, they accounted for 3.6% of those getting a permanent job through an alternative route.

### Ethnicity

There were no statistically significant differences among different ethnic backgrounds in the proportions obtaining permanent jobs via employment agencies relative to the proportions getting permanent jobs through other routes over the period.

However, employees from the EU 8 accounted for a statistically significantly higher proportion of those who obtained a permanent job through an employment agency, at 4.5%, compared to the proportion for other routes, at 3.0%.

### Disability

There were no statistically significant differences in the proportions obtaining permanent jobs through a) employment agencies and b) other avenues among people with Equality Act disabilities only (4.6% and 4.1% respectively) or those with work-limiting disabilities only (2.3% and 2.9% respectively). However, for people with both Equality Act and had a work-limiting disabilities, the proportions were statistically significantly different, at 2.4% and 4.4% respectively. Therefore those classified with both Equality Act and work-limiting disabilities accounted for a statistically significantly lower proportion of those getting a permanent placement through an employment agency, relative to other routes.

## **Conclusion**

Overall, the policy changes proposed are not expected to have negative equality impacts to any of the protected groups identified under the Equalities Act 2010.

It is proposed that essential protections for work-seekers will continue to be regulated under Option 2.

Although there are benefits as well as potential costs to work-seekers if enforcement of rights under the new legislation was moved to a civil individual approach, it may unduly affect vulnerable temporary agency workers, who are reluctant to use this type of enforcement. This may be mitigated by the introduction, in 2014, of the early conciliation approach, whereby all potential claims will be initially dealt with by Acas, free of charge.

The analysis of LFS data in relation to temporary agency workers and those using employment agencies to get permanent placements suggests that some protected groups under the Equality Act 2010 may be underrepresented as clients of the recruitment sector. We will consider with the industry and stakeholders potential ways of addressing this, including proposing that as part of self-regulation, employment agencies and businesses will be encouraged to publish their equalities policies.



# Competition Impact Test

We have fully considered the questions posed in The Office of Fair Trading competition assessment test<sup>56</sup> and concluded that none of the proposals outlined in this impact assessment are likely to hinder the number or range of suppliers or the ability and incentive for businesses to compete.

The proposed reduction in regulatory burden should act to reduce costs, and allow businesses in the recruitment sector more freedom to develop their business models.

**Table 6a. Competition assessment.**

Question: <i>In any affected market, would the proposal...</i>	Answer
..directly limit the number or range of suppliers?	No
..indirectly limit the number or range of suppliers?	No
..limit the ability of suppliers to compete?	No
..reduce suppliers' incentives to compete vigorously?	No

Source: BIS

# Small Firms Impact Test

Table 1 above shows that around 81% of employment agencies, and 67% of employment businesses are micro firms, with less than 10 employees. Small firms, with between 10 and 49 employees, comprise a further 13% of employment agencies, and 19% of employment businesses.

Overall the policy proposal in Option 2, to reduce the regulatory burden on recruitment sector firms, enabling them to devise their own approaches to meeting customer needs in areas no longer regulated, should benefit all businesses equally. Currently, all employment agencies and employment businesses are expected to be compliant with the Conduct Regulations: reducing the extent of the regulations should allow small and micro enterprises as much as large and medium enterprises to reduce administration in line with the regulatory reductions proposed and market requirements.

As small and micro enterprises would be expected to benefit from the reduction in regulation, no exemption from the changes proposed under option 2 will be put forward.

There are two different enforcement options for the reduced set of regulations proposed under option 2.

Option 2a proposes that the current government enforcement regime, based on criminal sanctions only, would continue. As this is the no change enforcement option, smaller businesses would face no negative or positive impacts.

Option 2b proposes enforcement through civil individual claims via the employment tribunal system. As noted in the main body of the impact assessment, it is estimated that a move to civil individual enforcement will have a cost to businesses and claimants.

<sup>56</sup> [http://www.offt.gov.uk/shared\\_offt/reports/comp\\_policy/oft876con.pdf](http://www.offt.gov.uk/shared_offt/reports/comp_policy/oft876con.pdf)

According to SETA 2008, 36% of businesses facing an ET claim were small or micro businesses (those with less than 50 employees)<sup>57</sup>. Across the whole economy 38% of employment in 2012 is in enterprises with less than 50 employees<sup>58</sup>, a similar percentage as in 2008. Therefore, smaller businesses should not be more likely to face ET claims overall. However, it is likely that claims generated from the smaller set of regulations proposed under Option 2 will follow a similar pattern to current complaints. As noted above, information is not readily available about the proportion of complaints investigated by the EAS that are about small or micro businesses. However, as most employment businesses or agencies are small or micro businesses, it is likely that the majority of complaints relate to them: it is therefore likely that a similar majority of individual claims will be about small or micro businesses. It would not be reasonable to exempt micro businesses from enforcement of the new regulations as it would expose work-seekers of micro businesses to a much greater risk of exploitation.

### Environmental impacts

These proposals will not have a significant impact on the greenhouse gas emissions or the environment more widely as they relate to reducing regulations affecting employment businesses or agencies, and how the reduced set of regulations would be enforced.

## **Social Impacts**

### Health and well-being

The proposals under Option 2 should not impact on individuals' health or well-being. Under Option 2 the regulations will no longer require employment businesses or agencies to identify the health and safety risks of particular jobs to work-seekers. However, any risk to a work-seeker is minimal, as hirers will also have a health and safety duty, and will require staff who are suitable for the placements they are offering.

Of the enforcement options, there is evidence that some claimants have found the process of making an employment tribunal case stressful. SETA 2008 shows that 36% of claimants found bringing a case stressful/emotionally draining/depressing, with 10% saying it resulted in physical health problems (however, a higher proportion of those involved in discrimination had negative non-financial impacts from bringing a case, with lower proportions in those areas more likely to be affected by the new recruitment sector regulations)<sup>59</sup>. The move to early conciliation in 2014, and other reforms of the employment tribunal system, are partly designed to speed up the process and encourage negotiation, which should help to reduce the stress involved. However, it may be that the stress in part relates to making a formal complaint about a workplace dispute. There are no data available about the impact on workers of making a complaint to the EAS, so it is not possible to compare the different options.

### Human rights

The proposals being put forward have been considered against the human rights act and we believe they are compatible.

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<sup>57</sup> M. Peters et al, Findings from the Survey of Employment Tribunal Applications 2008, BIS/BMRB Social Research, March 2010, P115 (table 2.15).

<sup>58</sup> BIS, Business Population Estimates for the UK and Regions, October 2012.

<sup>59</sup> M. Peters et al, Findings from the Survey of Employment Tribunal Applications, 2008, BIS/BMRB, March 2010, p249.

## Justice

A justice impact assessment has been sent to the MoJ, and the policy options have been discussed with HMCTS. The potential move to civil individual enforcement under Option 2b will, as indicated above, have some impact on the justice system. However, this impact is expected to be relatively small.

## Rural Proofing

We do not consider that these proposals will have any specific impact on rural communities.

## Sustainable Development Impacts

These proposals do not impact negatively on the wider environment or on future generations, so impose no negative impacts on sustainable development..

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