



**Department
for Business
Innovation & Skills**

Reforming the regulatory framework for the recruitment sector

**Government Response to
Consultation**

JULY 2013

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Foreword from Jo Swinson

Government is committed to building a stronger economy, to create wealth and jobs. The flexibility of the UK's labour market allows people to move between jobs and allows businesses to respond quickly to changing demands. We want to ensure that employment law supports and maintains the UK's flexible labour market, but the legislation that currently exists needs updating to reflect the way the recruitment sector operates in the present day, where the growth of online business models has seen significant changes take place across the sector. The current legislation is also complicated and difficult for businesses and individuals to understand. This view was supported by the majority of consultation responses we received.



We firmly believe that the reforms set out in the response will deliver real benefits. The most vulnerable workers on minimum wage will be better protected with an increase in resources for enforcing the national minimum wage. Employment agencies and employment businesses will benefit from simpler regulation. This will give the sector greater freedom to fulfil its role in providing labour market flexibility and adaptability.

We were delighted with the number, and the depth, of the responses received to the consultation and I would like to thank everyone who took the time to respond.

A handwritten signature in blue ink that reads "Jo Swinson".

Jo Swinson MP

Government response to the consultation on reforming the regulatory framework for employment agencies and employment businesses

1. Executive summary

- 1.1. The recruitment sector plays an important role in the UK's labour market by improving the efficiency of matching demand for jobs to demand for workers. However, the legislation which currently governs the sector is outdated and complicated and was identified by the Red Tape Challenge as needing reform.
- 1.2. On the 17 January the Government published a consultation on reforming the regulatory framework for employment agencies and employment businesses. The consultation sought views on the Government's proposal to replace the current legislation with a new, simpler, regulatory framework. The consultation also sought views on how recruitment sector legislation should be enforced.
- 1.3. The Government has considered responses to the consultation and intends to proceed with replacing the current legislation. The new regulatory framework would reduce some of the burden on business and would, for the most part, focus on the areas where work-seekers are most at risk of exploitation. The Government will carry out a further short consultation on draft legislation after it has been prepared.
- 1.4. The Government also intends to change the enforcement strategy in the recruitment sector by moving to a more targeted enforcement regime, focussing Government resources on helping the most vulnerable workers who are in greatest need of protection.

2. Introduction

- 2.1. The recruitment sector is currently regulated by the Employment Agencies Act 1973 and the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (the 'Conduct Regulations'). The legislation is complicated and difficult for businesses and individuals to understand and was identified by the Red Tape Challenge as needing reform. In reforming employment laws the Government is guided by our vision of ensuring that the labour market continues to be flexible, effective and fair.
- 2.2. The consultation sought views on the Government's proposal to establish a new, regulatory framework with minimum regulation. The proposal was for the new regulatory framework to focus on four outcomes for individuals and businesses that use the recruitment sector:
 - Employment agencies and employment businesses are restricted from charging fees to work-seekers
 - There is clarity on who is responsible for paying a work-seeker 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
- 2.3. The consultation also sought views on whether the new regulatory framework should be enforced by the Government or by individuals.
- 2.4. The consultation took place during a 12 week period, between the 17 January and the 11 April 2013. The Government received 286 formal responses to the consultation, through the online survey and submissions. The respondents represented a wide range of interested parties including business representatives, employment agencies, employment businesses, trade unions, legal bodies and individuals. Government officials also met with a range of interested parties to discuss the proposals.
- 2.5. This document is a summary of the consultation responses received and the Government's response to the consultation. We will publish individual consultation responses, where we have permission to do so, by 5 October 2013.

3. Analysis of respondents

3.1. Overall analysis is based on 286 consultation responses.

Group	number	Percentage of total
Micro businesses	93	32.5
Individuals	61	21.3
Small businesses	34	11.9
Business representatives/trade bodies	25	8.7
Medium businesses	22	7.7
Large businesses	19	6.6
Trade unions/staff associations	9	3.1
Legal representatives	8	2.8
Charities or social enterprises	4	1.4
Central or local government	2	0.7
Other	9	3.1

Some respondents identified more than one category, and have been allocated to the most appropriate one based on other information provided. Some of those identified as individuals have identified themselves as businesses (probably micros) in the “what organisation” question. Of those that didn’t identify a specific group, some are businesses (and a few could be clearly identified as large businesses, and have been allocated with that group).

4. Proposed outcomes

4.1. In the consultation document, we proposed that recruitment sector legislation should be minimised and, for the most part, focussed where workers are most at risk of exploitation. We identified four outcomes that Government believes are key to ensuring that workers are protected and that the sector operates fairly and flexibly:

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

4.2. As outlined in the consultation document, the existing legislation would be replaced with new legislation which would focus on or otherwise support the four outcomes above. We asked for views on whether there were any other outcomes which should be achieved by the reformed legislation.

SUMMARY OF RESPONSES TO THE CONSULTATION

Q1. Do you agree with the four outcomes that the Government believe should be achieved by new recruitment sector legislation?

Response	Number	Percentage of total	Of those who responded
Yes	183	64%	75%
No	58	20%	25%
No response	45	16%	

These percentages are broadly in line with those for individuals, micro, small and large businesses. Medium business and legal representative respondents were over 85% in favour.

For business representatives/trade body respondents, a similar proportion were opposed, but there was a smaller number stating they were in favour, 48%, and a higher proportion not responding emphatically in either direction, 32%. Trade Union/staff association respondents showed a similar pattern, but were more concerned to emphasise that, while they agreed with the four outcomes, they were a minimum and additional outcomes should also be achieved.

Many respondents welcomed the proposal to remove much of the current burden on business and there were comments that it was right that the legislation should focus on protections for work-seekers whilst allowing the sector more freedom in the way it operates. Some respondents said that this was a good opportunity to remove much of the current regulation that imposes requirements on business to business relationships. There were a high number of responses from 'Interim Managers' with their own Limited Companies, who want to be outside scope of the regulations, or for there to be an opt-out as there is with the existing regulations.

A number of respondents agreed that the four outcomes were important but did not go far enough to protect work-seekers. There were some calls to retain the requirement on employment agencies/businesses to carry out checks on work-seekers that are placed to work with vulnerable people, rather than leaving this to the hirer.

Some respondents felt that the current regulations were fit for purpose and all of the principles within the current regulations should be retained but this was an opportunity to bring the legislation up to date and also to simplify some of the language.

There were some concerns that any dismantling of the current regulatory framework would lead to a lowering of standards across the sector and could lead to exploitation of vulnerable work-seekers. Some felt that the current legislation needs to be strengthened and there were some calls for licensing of employment agencies/businesses.

Some respondents who answered 'no' to this question commented that they agreed with some but not all of the outcomes. A small number of respondents thought that agencies should be able to charge fees. There were also some comments that there should be no regulation on transfer fees and that this should be a business to business agreement.

Q2. Are there any other outcomes that you think should be achieved by the new legislation?

Response	Number	Percentage of total	Of those who responded
Yes	196	69%	80%
No	49	17%	20%
No response	41	14%	

Most respondents thought that other outcomes could be achieved. Only micro businesses had a lower proportion of 'yes' responses, 60%, with individuals showing similar proportions as respondents overall.

Some respondents said that the requirement on employment agencies and businesses to carry out checks on people looking for work with the vulnerable should be retained in the new regulations. A small number of respondents said that employment agencies/businesses should have to ask the hirer for details of health and safety information as they are currently required to.

As with Question 1, there were some respondents who thought that all of the current regulations should be retained.

A number of respondents (again as with Question 1) commented that there should be an opt-out for Limited Company Contractors.

5. Charging of fees

- 5.1. The current legislation prohibits employment agencies and employment businesses from charging fees to work-seekers with the exception of some circumstances in the entertainment and modelling sectors. The consultation made it clear that any new legislation will continue to prevent employment businesses from charging fees to temporary work-seekers. We sought views on whether there were any circumstances where employment agencies should be allowed to charge fees to permanent work-seekers.

SUMMARY OF RESPONSES TO THE CONSULTATION

Q3. Do you think there are circumstances, outside of the entertainment and modelling sector, where agencies should be allowed to charge fees?

Response	Number	Percentage of total	Of those who responded
Yes	71	25%	31%
No	161	56%	69%
No response	54	19%	

Individuals, micro businesses and small businesses all had a higher proportion answering yes, while large businesses, medium businesses, legal representatives and trade unions had very low yes percentages, and higher no percentages, especially medium businesses and trade unions.

The majority of respondents were opposed to the idea of allowing agencies outside of the entertainment and modelling sector to charge fees. A number of respondents said that the current arrangement, where fees for recruitment services are paid by the hirer and not the work-seeker, is well-established and has not hindered business. Many of those who responded said that an open and free route to finding employment is vital and work-seekers should be able to choose who represents them and be not restricted to affordability.

There were a number of calls for fees to be prohibited across the board, including circumstances in the entertainment and modelling sector where fees can currently be charged in some circumstances.

31% of respondents who answered this question were in favour of allowing agencies to charge fees. Some respondents said that there is a charge for most services and work-finding should be no different. One respondent said agencies should be allowed to charge fees but If they want to attract more users, they could offer themselves at little or no cost There were also a number of responses saying that agencies should be able to charge fees to the genuinely self-employed

6. Definition of employment agency

6.1. The Employment Agencies Act 1973 defines an ‘employment agency’ as:

‘.....the business (whether or not carried on with a view to profit and whether or not carried on in conjunction with any other business) of providing services (whether by the provision of information or otherwise) for the purpose of finding workers employment with employers or of supplying employers with workers for employment by them’

6.2. The consultation asked whether this definition could be improved.

Question 4: Do you think the current definition of “employment agency” as set out in section 13 of the Employment Agencies Act 1973 could be improved?

Response	Number	Percentage of total	Of those who responded
Yes	151	53%	78%
No	42	15%	22%
No response	93	32%	

Individuals and micro businesses had lower proportions who agreed that the definition could be improved relative to respondents overall. Large, medium and small businesses had much higher proportions in agreement, with business representatives, legal representatives and trade unions also more in agreement. Legal representatives also had a higher proportion, compared to all respondents, who disagreed.

There were comments that the current definition is outdated in view of the way business and technology has progressed in the last 40 years. Some respondents felt that changes need to be made not only to the definition of ‘employment agency’ but also to the definition of ‘employment business’ and some of the other definitions in the current legislation.

There were specific references to online recruiters and job boards and some comments that job boards should be excluded from the definition, subject to a very clear definition as to what constitutes a job board or a much more specific definition of ‘employment agency’.

A small number of respondents thought there should be specific definitions for agencies in the entertainment and modelling sector. Others commented that any new definitions need to be written in plain English and that inclusion of examples would be helpful in clarifying the meaning.

22% of those who responded to this question thought that the current definition did not need to be improved.

7. Cooling off periods

- 7.1. The current legislation allows work-seekers, when legitimate charges have been levied, a 30 day cooling off period in which they can cancel or withdraw from a contract without suffering any detriment or penalty. The cooling off period is 7 days for certain work-seekers in the entertainment sector. The consultation sought views on whether employment agencies should be required to give work-seekers a cooling off period in situations where fees can be charged. We also asked if there should be one standard cooling off period.

SUMMARY OF RESPONSES

Question 5: Do you think legislation should require employment agencies to give work-seekers a cooling off period in situations where fees can be charged?

Response	Number	Percentage of total	Of those who responded
Yes	99	35%	59%
No	70	24%	41%
No response	119	41%	

There was quite a high level of non-response to this question, notably among business representatives and large businesses. Individuals, legal representatives and trade unions were more likely to support the cooling off period than respondents as a whole. Medium, small and micro businesses were more likely than all respondents to oppose. The majority of those who did respond were in the entertainment and modelling sectors where cooling off periods already apply.

The majority of those who answered yes said that cooling off periods were a necessary protection for work-seekers, allowing them to assimilate information, compare services offered by a number of different agencies and preventing them from making rash decisions.

From those that responded 'no' there were some comments that there is enough information out there on the internet for work-seekers to read and research before they decide to join an agency. A couple of respondents said that work seekers are keen to get started immediately rather than wait for the cooling off period. One respondent commented that the purpose of a cooling off period is to prevent unscrupulous agencies from exploiting work-seekers but it also creates an administrative burden on reputable agencies.

Some respondents said that they do not support the charging of fees at all and without fees, cooling off periods are irrelevant. There were some comments that cooling off periods have not succeeded in protecting work-

seekers and the only solution is to ban upfront fees.

Question 6: If you answered yes to question 5, do you think there should be one standard cooling off period? What do you think the cooling off period should be?

Response	Number	Percentage of total	Of those who responded
Yes	74	26%	68%
No	35	12%	32%
No response	177	62%	

There was a high level of non-response to this question, in particular from business representatives and large businesses, but also from medium, small and micro businesses. Individuals, legal representatives and trade unions most strongly supported a standard cooling off period.

Of those who did respond, there was support for one standard cooling-off period which would be clearer for workers and businesses to understand. However, there were a wide range of views as to what a standard cooling off period should be - 19 respondents said the cooling off period should be 30 days, 16 respondents said that it should be 14 days; 15 respondents said it should be 7 days. There were also a range of other suggestions from 12 hours to 3 months.

A small number of respondents said the current 30 days cooling off period is excessive as people want to find work quickly and the cooling off period prevents this. One respondent in the modelling sector commented that the 30 day cooling off period restricts promotion of models for work.

8. Clarity on responsibility for paying temporary workers

- 8.1. Temporary workers are reliant on the employment business for their pay rather than the hiring business they work for. The Government sought views on its intention to continue to regulate to ensure that temporary workers are paid for the work they have done, even if the employment business has not received payment from the hirer.

SUMMARY OF RESPONSES

Question 7: 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?

Response	Number	Percentage of total	Of those who responded
Yes	138	48%	62%
No	84	29%	38%
No response	64	22%	

Business representatives, large businesses, legal representatives and trade unions all strongly agreed that legislation was necessary to provide clarity. A majority of small and medium business respondents disagreed, with micro businesses less likely to agree, and more likely to disagree than respondents overall.

The majority of respondents answered 'yes' to this question. There were some comments that lack of clarity about who is responsible for payment of wages is a common factor in cases of unpaid wages. A number of respondents said that the legislation needs to take account of complex supply chains (e.g. master vendors, umbrella companies) that now exist in the recruitment sector when defining who is responsible for paying a temporary worker.

Of those that responded 'no', there were some comments that this should be addressed through contractual agreements between businesses in the supply chain and not employment legislation.

9. Freedom to move within the labour market

- 9.1. The Government believes that temporary workers should be able to move within the labour market without detrimental action being taken against them. We intend to continue to ensure that employment businesses are restricted from penalising a work seeker for terminating or giving notice to terminate a contract with the employment business. We also intend to ensure that transfer fees do not restrict temporary workers from moving into permanent work. Regulations 6 and 10 currently ensure that temporary workers are able to move within the labour market but the Government believes there may be scope to simplify these regulations.

SUMMARY OF RESPONSES

Question 8: 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?

Response	Number	Percentage of total	Of those who responded
Yes	91	32%	54%
No	76	27%	46%
No response	119	42%	

Legal representatives, medium businesses small businesses, trade unions, and marginally, large businesses had higher proportions answering yes than respondents overall. Individuals, business representatives and micro businesses had slightly lower proportions agreeing compared to overall. Most groups had proportions disagreeing that were relatively close to the overall proportion.

One respondent commented that the use of post-termination restrictions in employment contracts and commercial contracts is prevalent in other sectors and there may be circumstances where, for commercial reasons, hirers may seek to restrict the ability of an individual from going to work for a competitor for example.

One respondent said that this regulation should be revised to provide that temporary workers who suffer a detriment for terminating or giving notice to terminate a contract will receive compensation.

Question 9: 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?

Response	Number	Percentage of total	Of those who responded
Yes	95	33%	61%
No	61	21%	39%
No response	130	46%	

There were a high number of non responses to this question, notably among individuals, micros and trade unions. There were higher numbers of responses, compared to all respondents, among large, medium and small businesses, legal representatives and trade unions. Micro businesses, business representatives and individuals had lower proportions agreeing.

Some respondents who answered 'yes' to this question said that the current wording is confusing. One respondent commented that the language of the regulation is not as clear as recent employment legislation and is inaccessible for non-legal users. There were comments that a simplified and user friendly version should be included in the new legislation.

Those that responded 'no' thought that alternative wording could lead to uncertainty and litigation in this area. One responded that although the current wording can be complex, it provides a 'precise outcome' in terms of charging a transfer fee.

Some respondents said that transfer fees are part of the commercial agreement between an employment business and a hirer and should not be subject to legislation.

One respondent said that in their view the current provisions on transfer fees '...act as a significant barrier to permanent employment for temporary workers'

10. Information sharing

- 10.1. The Government wants to ensure that the recruitment sector works as efficiently as possible and that both hiring businesses and people looking for work are able to choose an agency with confidence.
- 10.2. We considered that there was an opportunity for greater transparency in the sector and for employment agencies/businesses to publish more information about how they operate. The consultation asked whether employment agencies should publish information about their business, what information would be of most interest to work-seekers and hirers, and whether it should be compulsory to publish specific information.
- 10.3. The consultation also asked whether trade association codes of practice help maintain standards in the recruitment sector and we asked for suggestions of other non-regulatory tools which could be used to maintain standards.

SUMMARY OF RESPONSES

Question 10: Do you think employment agencies and businesses should publish information about their business?

Response	Number	Percentage of total	Of those who responded
Yes	118	41%	57%
No	89	31%	43%
No response	79	28%	

Higher proportions of individuals, legal representatives and trade unions compared to overall agree that recruitment businesses should publish information. The majority of small, medium and large business respondents are opposed. Business representatives were more likely to be opposed than in favour.

The majority of respondents said that employment agencies and employment businesses should publish information about their business and there were comments saying that many agencies/businesses already published varying degrees of information on their websites anyway. Some respondents said that transparency and clarity would help to address some negative perceptions of the sector.

A number of respondents said that although information is helpful, businesses should be able to choose whether they publish information and the extent of that information.

A couple of respondents commented that there is a much misinformation in the modelling sector, particularly around the charging of fees, and more information needs to be made available to potential models.

Of those who responded 'no' to this question, the main reasons given were that it would lead to more red tape in a market that is already highly competitive and publishing of information would not have any positive effect on levels of professionalism. There were some concerns that publishing of detailed information would be time consuming, especially for small businesses.

Question 11: What information do you think would be of most interest to work seekers and hirers?

With regards to work-seekers, a number of respondents thought that average rates of pay per job sector would be helpful as would details about contract terms and conditions

With regards to hirers, some respondents thought that the most important information for hirers is what fees the employment agency/business charges and the speed of placement.

A number of respondents thought that profiles and experience of business owners and consultants would be helpful for both work-seekers and hirers so they can judge whether they are dealing with experienced recruitment people. There were also comments that a code of conduct and information on complaints made against the employment agency/business would be of interest to both work-seekers and hirers.

Question 12: Do you think it should be compulsory for employment agencies and businesses to publish information about their business?

Response	Number	Percentage of total	Of those who responded
Yes	67	23%	36%
No	120	42%	64%
No response	99	35%	

The majority of respondents from business representatives and large, medium and small businesses disagreed. Legal representative respondents also had a higher proportion than overall disagreeing. Individuals and especially trade unions were more likely than overall to agree.

The majority of respondents who responded to this question thought that it should not be compulsory for employment agencies and businesses to publish information. Some respondents said that many employment agencies

and businesses already publish information but it should be a business decision whether to do so or not.

There were comments that making it compulsory would add further red tape and would place an additional administrative burden on business. A number of respondents said that some information may be commercially sensitive and therefore should not have to be published.

A number of respondents who answered 'yes' to this question said that compulsory publication of information would provide greater transparency and would give work-seekers more confidence in the sector. Two respondents thought that information should include details of complaints made against the agency and whether the complaint had been upheld.

Question 13: Do you think trade association codes of practice help to maintain standards in the sector?

Response	Number	Percentage of total	Of those who responded
Yes	144	50%	71%
No	58	20%	29%
No response	84	29%	

Higher proportions of respondents from business representatives, legal representatives, and large, medium and small businesses answered 'yes' when compared to respondents overall. Lower proportions of individuals, micros and trade unions agreed. Small businesses, individuals and trade unions had higher proportions opposed than overall.

The majority of respondents who answered this question thought that trade association codes of practice do help to maintain standards in the sector. There were some comments that membership of a trade association indicated to hirers that an employment agency/business would operate in an ethical and professional manner.

A high number of respondents said that although codes of practice are helpful they must be underpinned by legislation. One commented that, due to the diverse nature of the recruitment sector, many trade associations are industry specific and therefore codes of practice apply only to that association whereas legislation applies to all. Some respondents commented that there are no real sanctions imposed by most trade associations.

A number of employment agencies/businesses commented that they operate professionally without the need to become a member of a trade association.

Some respondents commented that there should be some form of accreditation or charter mark which could be linked to membership of a trade association.

Question 14: What other non-regulatory tools could be used to maintain standards in the recruitment sector?

A high number of respondents did not respond to this question.

Of those that did respond, some said that easier access to clear guidance would help to maintain standards, one person comment being that 'education is the best tool'. Some respondents said that existing trade association codes of conduct help to maintain standards while there were a small number of calls for a sector-wide code of conduct.

Some respondents said that regulation and enforcement is the only way to maintain standards. There were also some calls to reinstate licensing or to introduce a quality 'kite mark'.

11. Compliance

- 11.1. The current legislation is enforced by the Government. The consultation asked whether the Government should enforce the new legislation or whether individuals should be able to enforce their own rights at Employment Tribunals, as is the case with the Agency Workers Regulations 2010 and other areas of employment law.

SUMMARY OF RESPONSES

Question 15: Do you think that the Government should enforce the recruitment sector legislation?

Response	Number	Percentage of total	Of those who responded
Yes	155	54%	73%
No	57	20%	27%
No response	74	26%	

Compared to overall, higher proportions of respondents among business representatives, legal representatives, large, medium and small businesses and trade unions answered 'yes' to this question. Micros and individuals had lower proportions in favour and higher proportions opposed compared to overall. A higher proportion of small business respondents compared to overall were also opposed.

The majority of respondents felt that Government enforcement is necessary. Many believed that it acts as a deterrent and helps to maintain standards across the recruitment sector.

Some respondents said that moving to an individual enforcement regime would also leave employment agencies and businesses with no recourse to report breaches of the regulations by other businesses.

However, some respondents believed that Government enforcement should be more strategic and risk-based, to protect the most vulnerable work seekers who are unable to enforce their own rights either through the Employment Tribunals system or the small claims court.

Question 16: Do you think that prohibition orders should be included in the new enforcement regime?

Response	Number	Percentage of total	Of those who responded
Yes	129	45%	75%
No	43	15%	25%
No response	114	40%	

Compared to respondents overall, higher proportions of respondents from trade unions, large, medium and small businesses, business representatives and legal representatives answered 'yes' to this question. Micro businesses and individual respondents were less likely than overall to agree. Small business and individual respondents were marginally more likely to disagree than overall, while a higher proportion of micro business respondents were opposed than overall.

Most respondents who answered 'yes' said that the threat of prohibition is a powerful tool but there was general agreement that they should only be used for the most serious breaches of regulation or repeat offenders. There were some comments that employment agencies and businesses that give the industry a poor reputation need to be eradicated. A number of respondents said that more use needs to be made of prohibition orders and they also need to be better publicised to act as a deterrent.

Of those who answered 'no', one respondent said that business rather than the Government should correct any perceived market failure. Another respondent said that this shouldn't be seen as a regime where people potentially could be criminalised for mishandling a situation or failing to understand the regulations.

Question 17: Do you think individuals should be able to enforce their rights at an Employment Tribunal?

Response	Number	Percentage of total	Of those who responded
Yes	112	39%	58%
No	82	29%	42%
No response	92	32%	

Legal representative, trade union and individual respondents were more likely to answer 'yes' than respondents overall. Respondents from medium, small and large businesses were more likely to disagree than respondents overall. Business representatives and micro businesses had higher rates of non-response (with those responding more likely to agree than disagree).

The 'yes' responses were a mixture of those who said that the recruitment sector regulations should only be enforced by individuals and those who agreed that individuals should be able to enforce their rights but this should be in addition to Government enforcement.

Some of those who said the regulations should only be enforced by individuals commented that the risk of claims being made against them may focus employment agencies and employment businesses on the benefits of compliance. A number of respondents said that it is important that individuals feel empowered to take control of their situation and Employment Tribunals are best placed to resolve employment related matters. However there were some comments that some work seekers may be afraid to take solitary action against an employment agency/business. One respondent said that claims to the small claims court are more user-friendly and less formal than Employment Tribunals.

Of those that responded 'no' there were some comments that individual enforcement would risk employment agencies and businesses being faced with numerous individual claims, many of which may be without merit. There were concerns that this could add to the burden on business in terms of time and cost.

Some respondents said that, with the introduction of Employment Tribunal fees, individuals would not make a claim unless the amount they were owed outweighed the costs and this would not help vulnerable work-seekers such as those who are on the National Minimum Wage. There were also comments that the relatively short-term and low paid nature of some engagements in the entertainment sector would make it unlikely that many work-seekers would make a claim against an agency.

Question 18: What guidance do you think individuals would need to be fully aware of their rights and how to enforce them?

Some people said that the current sources of guidance for individuals, through the Gov.uk website, Acas and Citizen's Advice, are adequate and most work-seekers are aware of their rights. One respondent said that the information that exists at the moment is clear but is undermined by the various exemptions included in the current regulations.

A number of people said that employment agencies/businesses should be required to inform work seekers of their rights, and how to seek redress if

necessary. Some people said that there needs to be more publicity about the Employment Agency Standards Inspectorate (EAS) and one person said that employment agencies/businesses should be required to have the contact details of the EAS on their website.

Question 19: 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?

Response	Number	Percentage of total	Of those who responded
Yes	168	59%	80%
No	41	14%	20%
No response	77	27%	

Respondents from legal representatives, trade unions and small and medium businesses were more likely to answer 'yes' than respondents overall. Medium, small and large business respondents are also more likely to disagree. Business representative and individual respondents have fairly similar proportions to those overall.

The majority of respondents were in favour of publishing the findings of investigation. However, a large number of those in favour said that the trading name of the employment agency/business should not be published or only the most serious breaches should be published.

Those against felt that it was, effectively, a punitive measure which would only benefit competitors, damage agencies reputations for minor infringements and, if publication is allowed, should only happen in cases of prosecution.

12. Record-keeping

- 12.1. The current regulations impose comprehensive record-keeping requirements on the recruitment sector. The Government wants to reduce unnecessary burden on business but some records will be required to enable employment agencies and employment businesses to demonstrate that they have complied with the new regulatory requirements. We sought views on whether it is necessary to legislate to require agencies/businesses to keep records, and what records they should be required to keep.

SUMMARY OF RESPONSES

Question 20: 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?

Response	Number	Percentage of total	Of those who responded
Yes	131	46%	64%
No	74	26%	36%
No response	81	28%	

Respondents from trade unions, legal representatives and individuals are more likely to support legislation than respondents overall. Medium and small business respondents particularly were more likely to be opposed than overall.

The majority of people who responded to this question answered 'yes', the main reason being that records are necessary to enable employment agencies and businesses to show they have complied with the regulations, particularly if the agency/business is being inspected. A couple of respondents commented that having a proper record system helps to raise standards within the industry.

Some people said that while record keeping is necessary the requirements should be simple and not duplicate records that are already held for other purposes such as tax and immigration.

The majority of 'no' responses were more focussed on removing what they see as an unnecessary administrative burden on business

Question 21: What records do you think employment agencies and employment businesses should be required to keep in relation to work-seekers, hirers and other employment agencies/employment businesses?

Some respondents thought that the current record keeping requirements should be retained whereas others thought that record keeping should be reduced to demonstrate compliance with the four proposed outcomes. A number of respondents said that there is a need to clearly define how long the information needs to be retained and also make it clear that information can be held electronically (as current legislation sets out).

13. Government response

- 13.1. The Government has considered the responses to the consultation and, after this consideration, intends to proceed with the proposal to replace the current legislation with a new regulatory framework which removes some of the burden from business but continues to protect people who are looking for work. We would propose that new legislation could cover areas including:
- Ensuring that employment businesses do not withhold payment from a temporary worker
 - Restricting employment agencies and employment businesses from charging fees to work-seekers – exemptions for certain circumstances in the entertainment and modelling sector as in the current legislation
 - Ensuring that where more than one business work together to supply a temporary worker to a hirer there is clarity on who is responsible for paying the temporary worker
 - Preventing employment businesses and employment agencies from penalising a temporary work-seeker for terminating or giving notice to terminate a contract
 - Preventing employment businesses from enforcing unreasonable terms on a hirer when a temporary worker takes up permanent employment with that hirer
 - Ensuring that employment agencies and employment businesses keep sufficient records to demonstrate they have complied with the regulations
- 13.2. The Government does not intend to extend the charging of fees to employment agencies outside of the entertainment and modelling sectors.
- 13.3. Some responses to the consultation indicate that there may be abuse of upfront fees in the entertainment and modelling sectors. We intend to speak to a variety of stakeholders, including industry bodies representing sectors where upfront fees are in use, and unions, to better understand the issues.
- 13.4. The Government would amend the current definition of ‘employment agency’ to remove job boards from the scope of the regulations. Government does also acknowledge that clarity around which businesses the definition applies to is key to effective regulation in the sector.
- 13.5. We would carry out a further short consultation on draft legislation, including the new definition of ‘employment agency’, after it has been prepared. Further consideration will be given to the most appropriate way of ensuring that the UK’s wider obligations under EU and International law, such as the recruitment and placement aspects of the Maritime Labour Convention, are upheld.

- 13.6. The Government would retain a provision for individuals who are limited company contractors to opt out of the regulations and engage with employment businesses and employment agencies, in a business to business relationship.
- 13.7. The Government does not intend to make it compulsory for employment agencies and employment businesses to publish information about their business. Many businesses already publish varying degrees of information and the Government believes it should be left up to businesses whether they choose to publish information or not.
- 13.8. The Government intends to change the enforcement strategy in the recruitment sector by moving to a more focussed and targeted enforcement regime. In future we will focus Government resource on helping the most vulnerable workers who need protection, particularly those on the National Minimum Wage (NMW), by moving resources from the Employment Agency Standards Inspectorate to HMRC's NMW team. The NMW team will investigate complaints of non-payment of NMW to temporary workers. Enforcement will be carried out under NMW legislation and will be subject to HMRC sanctions.
- 13.9. A small team will remain in BIS to enforce the other regulations which apply to employment agencies and employment businesses, including non-payment to workers earning above NMW and workers in the entertainment and modelling sectors. Individuals will also be able to enforce their rights informally and through the courts.

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