



Department
for Business
Innovation & Skills

RECRUITMENT SECTOR

Government response to the
consultation on reforming the
regulatory framework for the
recruitment sector and proposal
to prohibit EEA-only recruitment

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Executive summary

The recruitment sector is regulated by the Employment Agencies Act 1973 and the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (the 'Conduct Regulations'). The sector plays an important role in ensuring that the UK's labour market is flexible, effective and fair by improving the efficiency of matching demand for jobs to demand for workers.

In 2013, the Coalition Government consulted on proposed reforms to the legislation which would allow the recruitment sector greater freedom to fulfil their role¹. On 13 October 2015, the Government published a further consultation to seek views on specific amendments to the Conduct Regulations to simplify the legislation where possible while retaining necessary protections for work-seekers.

The Government has considered responses to the consultation and intends to proceed with amending the legislation in line with the majority of the proposals within the consultation, including extending the regulation which currently prevents employment agencies and businesses from advertising specific vacancies for a job based in Great Britain, in other EEA countries without advertising it in Great Britain and in English either before or at the same time. This regulation will now also apply to generic recruitment campaigns carried out by employment agencies and businesses.

Following concerns raised by the majority of respondents regarding the negative impact of the removal of regulation relating to the information that should be included in job advertisements made by employment agencies and businesses ([regulation 27](#)), the Government has decided to retain that regulation, to ensure sufficient protections remain in place for work-seekers.

¹ www.gov.uk/government/consultations/recruitment-sector-changes-to-the-regulatory-framework-including-stopping-eea-only-recruitment

Introduction

The recruitment sector in Great Britain is regulated by the Employment Agencies Act 1973 and the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (the 'Conduct Regulations'). The sector has two legally defined types of service: employment agencies which introduce people to be employed by the hirer directly; and employment businesses which employ or engage people to work under the supervision of another person.

Between the 13 October and 23 November 2015 the Government consulted on proposals to amend the Conduct Regulations. The consultation sought views on the proposed specific amendments which would retain regulations which provide protection for work-seekers, while removing business-to-business regulation and simplifying the legislation where possible.

The consultation also asked what the impact would be on stakeholders of prohibiting employment agencies and businesses from recruiting from other EEA countries without advertising in Great Britain. This would extend the current regulation which prevents employment agencies and businesses from advertising specific vacancies for a job based in Great Britain, in other EEA countries without advertising it in Great Britain and in English either before or at the same time. The new extended regulation would apply to generic recruitment campaigns carried out by employment agencies and businesses.

The Government received 30 substantive responses to the consultation, through the online survey, email and postal submissions. The respondents represented a range of interested parties including business representatives, trade bodies, trade unions, legal representatives and individuals. Government officials also discussed the proposals with interested parties.

This document contains a summary of the consultation responses received and the Government's response to the consultation.

Analysis of respondents

Overall analysis based on 30 consultation responses.

Group	Number	Percentage of total
Employment Agency/Business	3	10%
Individual	3	10%
Large business	1	3.3%
Legal	3	10%
Micro Business	2	6.7%
Self employed	2	6.7%
Small Business	1	3.3%
Trade Body	9	30%
Trade union	6	20%

Summary of responses

Regulation 9

Prevents agencies and businesses from claiming to be acting on one basis to the work-seeker, while stating the alternative to the hirer.

Q1: How do you think the removal of Regulation 9 would affect employment agencies/employment businesses, work-seekers and hirers?

		Positively	No impact	Negatively	Nil response
Employment Agencies/Businesses	No.	5	13	7	5
	%	16.7	43.3	23.3	16.7
Work-seekers	No.	0	13	12	5
	%	0	43.3	40	16.7
Hirers	No.	0	16	9	5
	%	0	53.3	30	16.7

Some respondents felt that there would be a negative impact to removing regulation 9 because clarity and transparency on terms is necessary. Others felt that there would be no impact as there is no need in practice for clarity in this area as it is already clear to all parties.

Some respondents stated that this would be a welcome reduction in regulation, as there is little evidence of the type of activity that this regulation prevents. Others felt that this was the case because regulation 9 is a deterrent to this kind of activity. They felt that removing it may lead to an increase in employment agencies and businesses claiming to be acting in a different capacity.

The majority of respondents felt that there would be no impact on any of the groups of stakeholders.

Regulation 11

Prevents agencies and businesses from entering into a contract with a hirer on behalf of a worker and vice versa.

Q2: How do you think the removal of Regulation 11 would affect employment agencies/employment businesses, work-seekers and hirers?

		Positively	No impact	Negatively	Nil response
Employment Agencies/Businesses	No.	4	13	7	6
	%	13.3	43.3	23.3	20
Work-seekers	No.	0	13	11	6
	%	0	43.3	36.7	20
Hirers	No.	0	16	8	6
	%	0	53.3	26.7	20

The majority of respondents felt that there would be no impact on any of the groups of stakeholders.

Some respondents raised concerns that this would remove some protection for all stakeholders in the relationship, while others agreed with the statement in the consultation document that, for those most likely to be affected by removing this regulation, there are sufficient protections already within regulation 16. That regulation ensures that an agency which is permitted to charge work-seekers a fee for finding them work must provide the worker with specific terms, including whether the agency can act on their behalf. As a result, the removal of regulation 11 would have little impact.

Regulation 17

The requirement for employment businesses to obtain agreement to terms with hirers.

Q3: How do you think the removal of Regulation 17 would affect employment agencies/employment businesses, work-seekers and hirers?

		Positively	No Impact	Negatively	Nil response
Employment Agencies/Businesses	No.	4	9	11	6
	%	13.3	30	36.7	20
Work-seekers	No.	1	13	10	6
	%	3.3	43.3	33.3	20
Hirers	No.	4	13	7	6
	%	13.3	43.3	23.3	20

The majority of respondents felt that there would be no impact on work-seekers and hirers; however, most felt that there would be a negative impact on employment agencies/businesses.

The main reason stated for this perceived negative impact was that this regulation prevents disputes on the terms and fees between the parties; however, 30% of respondents agreed that this is a business to business arrangement and should therefore not be included in the regulations. Several respondents commented that this kind of agreement will be made between the employment agencies/businesses and hirers anyway, and that the impact would therefore be minimal at most.

Regulation 23

Provisions which require an employment agency/business to ascertain that any other employment agency/business they enter into a contract with is suitable to act in that capacity.

Q4: How do you think the proposed amendment to Regulation 23 would affect employment agencies/employment businesses, work-seekers and hirers?

		Positively	No Impact	Negatively	Nil response
Employment Agencies/Businesses	No.	6	11	5	8
	%	20	36.7	16.7	26.7
Work-seekers	No.	1	12	9	8
	%	3.3	40	30	26.7
Hirers	No.	2	15	5	8
	%	6.7	50	16.7	26.7

The majority of respondents felt that there would be no impact on any of the groups of stakeholders. There were some concerns that amending this regulation may raise the risk of exploitation of workers through sub-contractors being used without their suitability having been checked. Others commented that they agreed with the content of the consultation which stated there were remaining protections in regulation 23 which would ensure sufficient protections were still in place.

Regulation 27

Employment agencies and employment businesses to ensure that advertisements for vacancies contain certain specified information.

Q5: How do you think the removal of Regulation 27 would affect employment agencies/employment businesses, work-seekers and hirers?

		Positively	No Impact	Negatively	Nil response
Employment Agencies/ Businesses	No.	7	13	3	7
	%	23.3	43.3	10	23.3
Work-seekers	No.	0	5	18	7
	%	0	16.7	60	23.3
Hirers	No.	1	14	8	7
	%	3.3	46.7	26.7	23.3

The majority of respondents felt that there would be no impact on employment agencies/businesses and hirers; however, 60% of respondents felt that there would be a negative impact on work-seekers. Many felt that having some prescribed elements of what should be included in adverts is necessary, and that without this regulation there would be a risk that more unscrupulous employment agencies and businesses could advertise vacancies on terms that didn't reflect the reality of the position available.

Schedule 4

Requirement to include certain particulars in their records relating to work-seekers.

Q6: How do you think the proposed amendment to Schedule 4 would affect employment agencies/employment businesses, work-seekers and hirers?

		Positively	No Impact	Negatively	Nil response
Employment Agencies/Businesses	No.	9	12	2	7
	%	30	40	6.7	23.3
Work-seekers	No.	1	16	6	7
	%	3.3	53.3	20	23.3
Hirers	No.	0	18	5	7
	%	0	60	16.7	23.3

A high proportion of respondents either commented that there would be no impact, or decided not to comment at all on this proposal. 20% of respondents felt that this change would reduce the administrative burden on employment agencies/businesses, with a small number of respondents concerned that there may be some impact on risk to health and safety of work-seekers. Overall, the majority of respondents felt that there would be no impact on any of the groups of stakeholders.

Schedule 5

Requirements to include certain particulars in their records relating to the hirer.

Q7: How do you think the proposed amendment to Schedule 5 would affect employment agencies/employment businesses, work-seekers and hirers?

		Positively	No impact	Negatively	Nil response
Employment Agencies/Businesses	No.	8	9	5	8
	%	26.7	30	16.7	26.7
Work-seekers	No.	0	14	7	9
	%	0	46.7	23.3	30
Hirers	No.	2	14	6	8
	%	6.7	46.7	20	26.7

The majority of respondents felt that there would be no impact on any of the groups of stakeholders. A small number of respondents were concerned that this change would leave workers vulnerable when they try to enforce their employment rights. If certain records were not kept it could make finding evidence for future litigation more difficult. 53% of respondents either passed no comment or stated that they felt this change would reduce the administrative burden for employment agencies and businesses. 17% felt that there would be no impact as there would still be a need to retain such information for other regulations.

Schedule 6

Requirement to keep particulars relating to any other employment agency or business.

Q8: How do you think the removal of Schedule 6 would affect employment agencies/employment businesses, work-seekers and hirers?

		Positively	No impact	Negatively	Nil response
Employment Agencies/Businesses	No.	9	9	4	8
	%	30	30	13.3	26.7
Work-seekers	No.	2	14	6	8
	%	6.7	46.7	20	26.7
Hirers	No.	0	17	5	8
	%	0	56.7	16.7	26.7

The majority of respondents felt that there would be no impact on any of the groups of stakeholders. 23% felt that retaining this information would not be necessary, particularly if other proposed changes to the regulations through this consultation were carried forward. 17% of all respondents felt that this change may pose a risk to the health and safety of work-seekers. 57% either did not comment or stated that it would have a positive impact on employment agencies/businesses.

Job boards

Q9: Do you agree with the decision not to remove 'job boards' from the scope of the legislation?

	Yes	No	Nil response
No.	17	9	4
%	56.7	30	13.3

The majority of respondents did agree with the decision not to remove 'job boards' from the scope of the legislation. 33% stated that they felt job boards should remain in scope as they are offering work finding services, 10% stated that as job boards only advertise the

vacancies, they should not be included and 17% of respondents felt that more should be done to change the regulations to clarify the differences.

Regulation 27A

Amend to prohibit employment agencies and employment businesses from recruiting solely from other European Economic Area (EEA) countries without advertising in Great Britain and in English.

Q10: How do you think the proposed ban on employment agencies from recruiting overseas without advertising in GB would impact employment agencies/employment businesses, work-seekers and hirers?

		Positively	No Impact	Negatively	Nil response
Employment Agencies/Businesses	No.	7	10	4	9
	%	23.3	33.3	13.3	30
Work-seekers	No.	12	8	1	9
	%	40	26.7	3.3	30
Hirers	No.	9	9	3	9
	%	30	30	10	30

The majority of respondents felt that there would be no impact on employment agencies/businesses. Respondents were split equally between feeling that there would be a positive impact and no impact on hirers and the majority of respondents felt there would be an overall positive impact on work-seekers. 37% of respondents commented that they felt Great British workers have the right to see job vacancies first. 13% of respondents felt that the regulations should go further, as it would still be possible for organisations that operate in the Gangmasters Licensing Authority (GLA) sectors to engage staff from other EEA states, or they could use agencies based in countries outside Great Britain. 10% of respondents commented that it is sometimes necessary to look abroad for workers in specific sectors.

Access to job opportunities

Q11: Do you think the proposal to ban recruitment from overseas without advertising in GB would increase the number of job opportunities available to British workers?

	Yes	No	Nil response
No.	11	4	15
%	36.7	13.3	50

The majority of respondents agreed that the proposal to ban employment agencies and businesses from recruiting overseas without advertising in GB first would increase the number of job opportunities available to GB workers.

Evidence of recruiting solely from other EEA countries

Q12: Do you have any evidence of employment agencies and employment businesses recruiting solely from other EEA countries without advertising in GB?

	Yes	No	Nil response
No.	0	16	14
%	0	53.3	46.7

Evidence of recruiting solely from non-EEA countries

Q13: Do you have any evidence of employment agencies and employment businesses recruiting solely from non-EEA countries without advertising in GB?

	Yes	No	Nil response
No.	12	15	14
%	3.3	50	46.7

² Limited information was given about this example, we will contact the respondent to find out more specific details and investigate further if necessary.

Government response

The Government has considered responses to the consultation and intends to proceed with the majority of the proposals within the consultation. These are:

- Remove regulation 9 which currently prevents agencies and businesses from claiming to be acting on one basis to the work-seeker, while stating the alternative to the hirer.
- Remove regulation 11 which prevents agencies and businesses from entering into a contract with a hirer on behalf of a worker and vice versa, except where an agency has authority and is permitted to charge fees for finding work.
- Remove regulation 17, the requirement for employment businesses to obtain agreement to terms with hirers.
- Amend regulation 23 to remove provisions which require an employment agency/business to ascertain that any other employment agency/business they enter into a contract with is suitable to act in that capacity, and the requirement to agree in what capacity each of them will act.
- Amend regulation 27A so as to prohibit employment agencies and employment businesses from recruiting solely from other European Economic Area (EEA) countries without advertising in Great Britain and in English (current provision prohibits advertising specific vacancies without advertising in Great Britain but not generic recruitment campaigns).
- Amend Schedule 4 to remove some of the requirement to include certain particulars in their records relating to work-seekers.
- Amend Schedule 5 to remove some of the requirements to include certain particulars in their records relating to the hirer.
- Remove Schedule 6 which will remove the requirement to keep particulars relating to any other employment agency or business.

We believe that the reforms to the legislation will allow the recruitment sector more freedom to fulfil its role in matching demand for jobs to demand for workers. We also believe that strengthening the existing legislation which prevents employment agencies and businesses from advertising jobs in other EEA countries without advertising them in Great Britain and in English, to make it illegal for them to fill vacancies in Great Britain from other EEA countries by means of generic recruitment campaigns, will increase the opportunities for workers in Britain to apply for jobs that are based in Great Britain and the responses to the consultation support this belief.

The Government has however decided to retain regulation 27, which determines the circumstances in which an employment agency/business may advertise a position and specifies what particular information should be included in job advertisements. This is due to the strong comments and concerns raised by respondents about the removal of this provision.

60% of respondents stated that removing regulation 27 would have a negative impact on work-seekers and 40% of respondents suggested that unscrupulous agencies would be more likely to include misleading information in their job advertisements to attract a wider number of applicants. For example, some respondents felt that work-seekers could find themselves in a situation where, if they are underpaid a previously agreed hourly rate, they would have less evidence of the pay rate agreed by the agency, leaving them more vulnerable to exploitation.

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

The Government received some strong comments from affected stakeholders relating to the decision not to remove 'job boards' from the scope of the Conduct Regulations; however, the Government stands by this decision, as the majority of respondents agreed this was appropriate.

Annex A: List of respondents

List of respondents to the consultation, not including individuals:

- Adecco Group UK & Ireland
- APSCo
- ARC
- BECTU Research
- Birmingham Law Society
- Dijon Logistics Management Limited
- Employment Lawyers Association
- Equity
- Eviture (UK) Ltd
- FCSA
- IPSE
- Manufacturing Futures
- Monster (joint response 8 companies)
- Montague Consult
- My First Job in Film
- National Union of Teachers
- Nautilus International
- Osborne Clarke
- REC
- Resourceful in UK
- TEAM
- The Agents' Association
- TUC
- UK Chamber of Shipping
- Unison



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