

EXPLANATORY MEMORANDUM TO
THE CONDUCT OF EMPLOYMENT AGENCIES AND EMPLOYMENT
BUSINESSES (AMENDMENT) REGULATIONS 2016

2016 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Business Innovation and Skills and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The instrument amends the Conduct of Employment Agencies and Employment Businesses Regulations 2003 ('the Conduct Regulations 2003') to reduce certain regulatory burdens on employment agencies and employment businesses by omitting some of the regulations while continuing to protect work-seekers. The instrument also amends regulation 27A to bring generic recruitment advertising, as well as advertising to fill specific posts, within the prohibition there related to advertising elsewhere in the EEA. The instrument also makes consequential amendments to the Merchant Shipping (Maritime Labour Convention) (Recruitment and Placement) Regulations 2014 to take account of amendments to Schedules 4, 5 and 6 of the Conduct Regulations 2003.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland.

4. Legislative Context

- 4.1 The recruitment sector is regulated by the Employment Agencies Act 1973 and the Conduct Regulations 2003. 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.
- 4.2 The legislation covers all employment agencies and employment businesses in England, Scotland and Wales and provides a framework for contracts between employment agencies/employment businesses, hirers and work-seekers. It also covers principles such as restrictions on fee-charging and ensuring that temporary workers are paid for the work they have done.
- 4.3 The legislation is enforced by the Employment Agency Standards inspectorate (EAS) based in BIS. Criminal penalties exist within the Employment Agencies Act and a successful prosecution may lead to an unlimited fine in a Magistrates' Court or a Crown Court. In addition, section 3A of the Employment Agencies Act 1973 enables

the Secretary of State to make an application to an Employment Tribunal for a Prohibition Order to prevent an individual or individuals from running or being involved in the running of an employment agency or employment business for up to 10 years. However, in line with the Regulators' Code, EAS focuses its work on encouraging and promoting compliance. Prosecutions and prohibitions are only pursued in cases of sustained and wilful non-compliance.

- 4.4 Under regulation 30 of the Conduct Regulations, an individual can also make a claim in the civil courts if they believe they have been caused 'damage' by the failure of an employment agency or employment business to comply with the Employment Agencies Act 1973 or the Conduct Regulations.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is Great Britain
5.2 The territorial application of this instrument is Great Britain.

6. European Convention on Human Rights

- 6.1 The Minister of State for Skills has made the following statement regarding Human Rights:

“In my view the provisions of the Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2016 are compatible with the Convention rights.”

7. Policy background

What is being done and why

- 7.1 For the amendment to Regulation 27A of the Conduct Regulations 2003, there was a specific commitment from the Prime Minister during his speech on immigration on 21 May 2015 that the Government would make it illegal for employment agencies to recruit solely from abroad without advertising those jobs in Britain and in English. Although the existing regulation 27A goes some way towards this – it has a prohibition that relates to advertising specific vacancies in other EEA States – this amendment will widen the provision to include generic recruitment campaigns in the EEA. UK immigration rules already favour native workers over non-EEA workers through the requirement for each position to undergo a 'Resident Labour Market Test' prior to being advertised outside the EEA.
- 7.2 The broader amendments and removal of Regulations from the Conduct Regulations have been developed to remove burdensome legislation where possible and to give employment agencies and businesses greater freedom in the way in which they work, while retaining sufficient protections for the work-seekers.

Consolidation

- 7.3 There are no immediate plans to consolidate the Conduct Regulations.

8. Consultation outcome

- 8.1 The Government consulted on these proposals between 13 October 2015 and 23 November 2015. A copy of the consultation can be found here:
<https://www.gov.uk/government/consultations/recruitment-sector-changes-to-the->

[regulatory-framework-including-stopping-eea-only-recruitment](#). We received 30 responses to the consultation. In each area that we were considering change we asked for stakeholders to provide their opinion on what the impact would be to all relevant stakeholder groups.

- 8.2 In the majority of questions stakeholders stated there would be no significant impact on any of the stakeholder groups. The exceptions to this were an overall positive impact on work-seekers of the proposed changes in relation to recruitment advertising elsewhere in the EEA, an overall negative impact on the proposal to remove the requirement to include specific information in job adverts (which is not being taken forward) and an overall negative impact on employment agencies and businesses of agreeing terms with a hirer upfront. There was no substantive evidence given of employment agencies or businesses recruiting solely from other EEA countries or from non-EEA countries.

9. Guidance

- 9.1 We will publish guidance on gov.uk and circulate the link to interested parties such as the trade associations for the recruitment industry.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is likely to be minimal. The overall estimated saving for businesses will be approximately £0.9m annually.
- 10.2 The impact on the public sector is also minimal.
- 10.3 An Impact Assessment is submitted with this memorandum and will be published alongside the Explanatory memorandum on the legislation.gov.uk website.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 11.2 No specific action is proposed to minimise regulatory burdens on small businesses.

12. Monitoring & review

- 12.1 We will monitor the number of complaints received by EAS that relate to any of the changes made by this instrument. We will review all relevant complaints and assess whether or not any further amendment is necessary.
- 12.2 The Minister of State for Skills has made the following statement regarding the duty to review regulatory provisions in secondary legislation: the Department for Business, Innovation and Skills will undertake an internal review of Parts 2, 3, 5 and 7 of the Conduct Regulations 2003, in accordance with the provisions of new regulation 34 of the Conduct Regulations 2003, and publish a report setting out the review's conclusions within 5 years of implementation of this instrument. It is not appropriate to make provision for review of the Merchant Shipping (Maritime Labour Convention) (Recruitment and Placement) Regulations 2014 as this instrument only makes consequential amendments to those regulations.

13. Contact

- 13.1 Heather Beatson at the Department for Business, Innovation and Skills, Telephone: 0207 215 4158 or email: Heather.Beatson@bis.gsi.gov.uk can answer any queries regarding the instrument.