

Title: Prohibiting employment agencies and employment businesses from recruiting exclusively in other EEA countries IA No: BIS 0401 Lead department or agency: BIS Other departments or agencies:	Impact Assessment (IA)		
	Date: 10 November 2014		
	Stage: Final		
	Source of intervention: Domestic		
	Type of measure: Secondary legislation		
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Summary: Intervention and Options			RPC Opinion: Green

Cost of Preferred (or more likely) Option						
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2013 prices)	In scope of One-In, One-Out?	Measure qualifies as		
£m -0.08	£m -0.08	£m 0.01	Yes	In		
What is the problem under consideration? Why is Government intervention necessary? <p>The recruitment sector is regulated by the Employment Agencies Act 1973 and the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (both as amended). The current recruitment sector legislation does not regulate where job vacancies are advertised. This means that some employment agencies and employment businesses may be advertising vacancies in other EEA countries without giving workers in Britain the opportunity to apply. Although this practice may be considered a breach of the Equality Act 2010, Government intervention is needed to correct the enforcement mechanism, and therefore improve equity in the labour market by ensuring that recruitment firms advertise jobs located in Britain in English to individuals resident in Britain.</p>						
What are the policy objectives and the intended effects <ol style="list-style-type: none"> To improve fairness by creating a level playing field for work-seekers by ensuring that employment agencies and employment businesses advertise all job vacancies based in Great Britain in English and to British residents. To expand the range of job opportunities open to people in Great Britain; expand the range of people that businesses can choose from and ensure that vacancies are accessible to English speakers. To effectively enforce the equality of access to advertisements for jobs in GB (Northern Ireland has its own version of the Conduct Regulations). 						
What policy options have been considered, including any alternatives to regulation? <p>One option has been considered against the 'do nothing' option:</p> <ol style="list-style-type: none"> Do nothing: rely on provisions in the Equality Act 2010 which is enforced by the Equality and Human Rights Commission (EHRC) The preferred option: amend the Conduct of Employment Agencies and Employment Businesses Regulations to include a new regulation which would prohibit employment agencies and employment businesses from advertising jobs exclusively in other EEA countries. <p>It was considered that a non-statutory code of practice would be unlikely to realise the policy objectives, while amending enforcement of the Equality Act was considered disproportionate, with a disproportionate cost to business.</p>						
Will the policy be reviewed? Yes, in 2020						
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.		Micro Yes	< 20 Yes	Small Yes	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? N?A			Traded: -	Non-traded: -		

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: Jo Swinson Date: 10 November 2014

Summary: Analysis & Evidence

Policy Option 2

Description: **Requiring employment businesses and agencies to advertise to people in Britain placements located in Great Britain**

Price Base Year 2013	PV Base Year 2015	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -0.08	High: -0.08	Best Estimate: -0.08

COSTS (£m)	Total Transition (Constant Price) Year	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0.1	0	0.1
High	0.1	0	0.1
Best Estimate	0.1	0	0.1

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

We estimate that there will be familiarisation costs to employment businesses and agencies of £0.08 million. The majority of these costs apply to businesses not directly affected by the proposed regulation establishing that that is indeed the case.

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

There may be slight costs if affected firms need to revise their recruitment processes to cover English speakers. There may be a negligible additional enforcement cost to the Exchequer. However, as noted below, businesses affected by the regulation would be likely to be in breach of the Equality Act, so these costs would not count as regulatory costs.

BENEFITS (£m)	Total Transition (Constant Price) Year	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	n/a	n/a	n/a
High	n/a	n/a	n/a
Best Estimate	n/a	n/a	n/a

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

N/A

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

As the proposed regulation would remove a potential restriction from the labour market, by requiring that advertisements for placements located in Great Britain are advertised to people in Britain, there are potential benefits from a wider choice of jobs for people in Britain, and a wider range of candidates for hirers.

Key assumptions/sensitivities/risks

Discount rate (%)

3.5

We expect there to be very few recruitment firms placing adverts exclusively overseas for jobs located in Great Britain, if the number is higher than we estimate, costs could be higher.

It is likely that the practice of advertising GB jobs exclusively in other EEA countries or exclusively in a language other than English is already a breach of the Equality Act. As such, the cost of these businesses complying would not count as a regulatory cost. In the event that this is not the case, costs could be slightly higher.

This regulation would not affect hirers going directly to recruitment firms (including job boards) based outside of GB.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of	Measure qualifies
Costs: 0.01	Benefits: 0	Net: 0,01	Yes	In

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
- 2 The Conduct of Employment Agencies and Employment Businesses Regulations 2003
http://www.legislation.gov.uk/uksi/2003/3319/pdfs/uksi_20033319_en.pdf
- 3 The Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2007 http://www.legislation.gov.uk/uksi/2007/3575/pdfs/uksi_20073575_en.pdf
- 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
- 5 Terms and Conditions of Employment, the Agency Workers Regulations 2010
http://www.legislation.gov.uk/uksi/2010/93/pdfs/uksi_20100093_en.pdf

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Evidence Base

Problem under consideration

- 1) The United Kingdom has one of the most lightly regulated labour markets in the developed world, fourth to New Zealand, the US and Canada for permanent employees and third to Canada and the US on temporary contracts¹. 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.
- 2) 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 1.7 million people into work each year². The recruitment sector is regulated by the Employment Agencies Act 1973³ and the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (the "Conduct Regulations")⁴. 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.
- 3) The Conduct Regulations do not currently regulate where, or in which language, job vacancies are advertised. This means that some employment agencies and employment businesses may be advertising GB vacancies in other EEA countries or in EEA languages other than English without giving workers in Britain the opportunity to apply. This barrier imposed on British residents preventing access to some jobs located in Britain undermines the fairness of the labour market in this context. This was raised as a concern in the House of Commons during Public Bill Committee stage of the Immigration Bill. The Government is proposing to amend the Conduct Regulations to include a regulation which would prohibit employment agencies and employment businesses from advertising jobs elsewhere in the EEA without simultaneously advertising them in Great Britain and at least in English. A separate version of the Conduct Regulations operates in Northern Ireland, and the Northern Ireland Executive is considering its own wider reform of these regulations.

¹ OECD (2013) "Protecting jobs, enhancing flexibility: A new look at employment protection legislation" in OECD Employment Outlook 2013, OECD publishing http://dx.doi.org/10.1787/emp_outlook-2013-6-en

² The Recruitment and Employment Confederation's Industry Trends Survey 2012/13

³ Employment Agencies Act 1973,

http://www.legislation.gov.uk/ukpga/1973/35/pdfs/ukpga_19730035_en.pdf

⁴ The Conduct of Employment Agencies and Businesses Regulations 2003

http://www.legislation.gov.uk/uksi/2003/3319/pdfs/uksi_20033319_en.pdf

Box 1: Evidence gathered through public consultation

Given the limited robust evidence on the topic we conducted a public consultation in order to gather information to help our appraisal. The consultation was published on Gov.uk (link below) and ran for 5 weeks from the 29 July to 2 September 2014.

<https://www.gov.uk/government/consultations/recruitment-sector-prohibiting-the-advertising-of-jobs-exclusively-in-other-eea-countries>

We also emailed approximately 300 stakeholders to notify them of the consultation. The stakeholder list was made up of trade associations, recruitment agencies, trade unions, legal organisations and individuals who had responded to a previous consultation on the Conduct Regulations and others that had specifically asked to be kept informed of future recruitment sector consultations.

Responses could be submitted online, using SurveyMonkey, by email or post. We received 31 responses to the consultation from a range of stakeholders, including trade associations, employment agencies/employment businesses and individuals.

2 respondents said they had evidence of overseas-only advertising. We are in the process of looking at these examples to see if the businesses would fall within scope of the new regulation.

61% of respondents said that they believed the draft regulation meets the Government's objective of creating a level playing field for workers in Britain. 64% said they thought the regulation would help to expand the range of job opportunities open to people and the range of people businesses can choose from.

55% said they thought the draft regulation was appropriate to deal with recruitment advertising on websites.

45% said they could see downsides to the proposal, including costs to business and concerns that the proposed regulation does not go far enough to address the problem of overseas-only advertising and recruitment.

Estimated scale of the problem

- 4) There is little evidence that employment agencies and businesses physically advertise vacancies based in Britain only to workers resident in other EEA countries. We requested information about the extent of the problem in our recent public consultation and were told that trade bodies had no evidence of their members carrying out this sort of advertising. Responses from individuals provided slightly more anecdotal evidence.

- 5) There was some reference to firms undertaking the practice during the Parliamentary Public Bill Committee stage of the Immigration Bill on 19th November 2013. Further web searching⁵ suggests that there may be some incidences of online job boards that advertise exclusively in languages other than English, with a very small number of firms found advertising on their own websites only in other languages both for vacancies and for workers to join pools⁶. Essentially, where advertised jobs do not have specific language requirements to enable them to be fulfilled (which may qualify for the Equality Act defence outlined in paragraph 25) then the advertisements would need to be available in English to British residents.
- 6) Although the evidence is limited, on balance it appears that the number of firms undertaking this activity is very small. The number of jobs affected is likely to be noticeably higher than the number of firms, though it would still represent a very small proportion of the total number of jobs advertised through the recruitment sector.

Proportionality of evidence used

- 7) As noted in the summary pages, we expect the impact of this new regulation to be small. We have based this assessment on the information we gathered during the consultation, and other information we managed to obtain through our own online research. Given the few employment businesses and agencies with a British presence engaging in solely advertising British jobs overseas (to residents of other EEA countries), it is not realistic to expect further attempts to gather evidence would yield any information that would substantially change our current analysis. To get a quantitative perspective of the extent of an activity within the recruitment sector, a standard approach would be to run a survey of a random sample of recruitment firms. In this case, this would not be effective as such a random sample would be unlikely to include sufficient enterprises that were advertising British jobs solely overseas to provide robust data. We do not think there is a business register that would enable targeted sampling of recruitment firms more likely to operate this way. Further internet research would not enable a comprehensive assessment of the extent of the practice across the sector, even if it revealed a few more firms engaged in overseas advertising. Therefore we consider that further information gathering would not be cost effective or substantially improve the evidence base.

Rationale for intervention

- 8) The Conduct Regulations do not currently regulate where employment agencies and employment businesses place advertisements for vacancies. This means that some employment agencies and employment businesses may be advertising vacancies

⁵ BIS staff undertook over 8 hours of internet research to investigate evidence of recruitment firms advertising GB based jobs solely in other EEA countries, including specifically targeting jobs advertised in France, Poland, Romania and the Czech Republic.

⁶ Searching for the phrases “jobs in England”, “jobs in Scotland” and “jobs in Wales” translated online into a variety of other EEA languages yields a small number of classified jobs boards and firms creating their own advertisements. Using online translation, we then found examples of specific vacancies advertised solely in the language of the website. We then searched for the same vacancy in English and found examples where we could not retrieve this.

overseas without giving workers in Britain the opportunity to apply. This may impact on the equity of the labour market, by limiting some job opportunities in Great Britain to job-seekers from other EEA countries only (12% of responses from our consultation made reference to implementing the principle of equal opportunities. 61% of respondents agreed that the proposals would help to create a level playing field). It also undermines the effectiveness of the labour market by unnecessarily reducing the job choices available to individuals in Great Britain, and unnecessarily limiting the choice of candidates the hiring business will have to choose from – potentially reducing the available labour supply and reducing the effective matching of jobs.

- 9) Although overseas-only advertising is not currently a breach of the Conduct Regulations, such practices could be a breach of the Equality Act 2010. This will depend on the facts of each individual case. The EHRC is the regulator with responsibility for enforcing some aspects of the Equality Act 2010 in accordance with its statutory duties as set out in the Equality Act 2006. However, the EHRC has no power of disclosure unless they launch a formal investigation. This means that if the EHRC received a complaint about overseas-only advertising, the employment agency or employment business concerned would not be compelled to provide evidence to show they were compliant with the Equality Act 2010.
- 10) The EHRC would need to launch a formal investigation to enable it to use its powers of disclosure. There are a number of steps involved in carrying out an investigation including providing written details of why an action may be unlawful and terms of reference; providing an opportunity for the named organisation to comment on the terms of reference and publicising the terms of reference. This can be a lengthy process.
- 11) In contrast to the EHRC, EAS inspectors have comprehensive inspection powers under section 9 of the Employment Agencies Act 1973, including the power to inspect any records or documents kept in relation to the Act or the Conduct Regulations. This means that EAS inspectors can act quickly in response to a complaint and can request information from an agency using their section 9 powers.
- 12) Therefore the proposed policy of amending the Conduct Regulations provides certainty that recruitment firms should advertise posts located in Britain in English and to British residents. This clearly addresses the fairness concerns caused by the barrier to British residents accessing some jobs based in Britain due to them being advertised solely overseas and not in English.

Other options considered and ruled out at policy development stage

- 13) Potentially, the approach that the EHRC takes to enforcement of the Equality Act 2010 could be changed. However, to make any such changes would require amendments to the Equality Act 2006, and this would have wider implications for how the EHRC enforces the Equality Act 2010 in general. We believe it would be disproportionate to reform the EHRC's enforcement powers solely to streamline the investigation process for overseas-only advertising. For this reason we took the decision not to include this as an option and did not consult on it.

- 14) In contrast to the Conduct Regulations, the Equality Act applies to all businesses; as such any changes to the regulation could potentially affect all GB employers. According to the BIS Business Population Estimates there were just under 1.2 million employers in GB in 2013⁷. Applying the same assumed familiarisation costs as below – 10 minutes of an HR manager’s time (see costs and benefits section) – would suggest a familiarisation cost to business of around £5.4m. There may also be costs to the EHRC in terms of enforcement resources. However, the benefits of this approach would likely be similar to the preferred option examined in this IA.
- 15) The option of including guidance on advertising jobs based in Britain in a non-statutory code of practice was not viewed as likely to achieve the policy objective. Currently, industry codes of practice for employment businesses and agencies are provided by individual trade associations, such as APSCo and REC. These already include principles relating to non-discrimination or equality. The potential policy option considered was to devise a code of practice for the industry as a whole based on those of the trade associations, which would be enforced by the trade associations. While a significant proportion of the recruitment sector in revenue terms may be trade association members, there is still a significant number of recruitment firms that are not involved. Therefore, it was deemed likely that trade association enforcement alone would not have sufficient reach to ensure compliance. This was especially the case as the practice of advertising British based jobs solely overseas is apparently rare, and potentially involves recruitment firms outside of the mainstream of recruitment sector (with a specific focus on bringing workers from other EEA countries to the UK). Codes of practice can also be effective if there is a clear societal pressure to comply, so that non-compliant businesses risk reputation damage, and a potential loss of business. It seemed unlikely that in these circumstances that ethical pressure would succeed in causing the few businesses involved to change their behaviour. This is because the affected employment businesses and agencies would have to consider the suggested non-statutory code of practice as beneficial to their business model for them to adopt it. They are unlikely to do so because:
- ◆ Those employment businesses and agencies advertising British jobs to those resident elsewhere in the EEA are offering a niche service, which they are likely to consider core to their business. The provision of this service is likely to reflect the demands of some hirers, who consider recruitment from overseas as advantageous to their business.
 - ◆ The number of jobs affected is likely to be a very small proportion of the total number of British jobs being advertised at any point in time. Therefore, it is unlikely to be seen as a major ethical issue, unless specific locations are unduly affected.
- 16) These two factors make it unlikely that the few businesses advertising British jobs solely overseas would alter their practice unless there was a legal requirement to do so and an effective enforcement regime.

⁷ <https://www.gov.uk/government/publications/business-population-estimates-2013>

Policy Objective

- 17) The Government wants to create a level playing field for workers by requiring employment agencies and employment businesses to ensure that all vacancies for jobs based in Britain are advertised in Britain and in English **at least**. We believe this will expand the range of job opportunities open to people in Britain, by removing a barrier to accessing some jobs. This will improve the equity of the labour market, and will also expand the range of potential applicants that that businesses can choose from.
- 18) This regulation will only apply to employment agencies and employment businesses based, or with a presence, in Britain. It will not prevent hirers advertising directly in the EEA, or going to employment agencies or employment businesses based in other EEA countries who may then advertise only in their country of origin or not advertise in English. There is anecdotal evidence that this occurs and although such cases will not be covered by the proposed regulation, they may be a breach of the Equality Act and could be investigated by the EHRC.

Description of Policy Options

- 19) **Option 1: Do nothing.** 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.
- 20) **Option 2: Preferred option.** The Government proposal to regulate to ensure a level playing field for workers in GB by prohibiting employment agencies and employment businesses from advertising jobs exclusively overseas. The regulation would also require employment agencies and employment businesses to ensure that job adverts are published in English (they would be free to publish advertisements in additional languages if they chose to).
- 21) We have consulted on amending the Conduct Regulations to prohibit employment agencies and employment businesses from advertising jobs exclusively in other EEA countries. This was in response to concerns raised during debates in the House of Commons during Public Bill Committee for the Immigration Bill that some agencies may be discriminating against UK workers by sourcing labour exclusively from other EEA member states.
- 22) The proposed regulation would not ban employment agencies/businesses from advertising jobs in other EEA countries but would require them to ensure that:
- ◆ all jobs located in GB and advertised in other EEA counties are advertised simultaneously in GB (or in a readily accessible way to GB residents, such as via a website),
 - ◆ All adverts for jobs located in GB are available in an English version.

- 23) The regulation would only cover employment agencies and employment businesses that are based in GB or where there is some presence in GB⁸.
- 24) Overseas-only advertising by an employment agency or employment business is already potentially a breach of section 55 of the Equality Act 2010 which makes it unlawful for an employment service provider to discriminate in the arrangements made to recruit to a post. However, the proposed regulation would make it very clear to those employment agencies and employment businesses that place advertisements in other EEA countries that vacancies must also be advertised in GB.
- 25) The Equality Act 2010 includes a defence to claims of both direct and indirect discrimination where an employer can show that being of a particular race (which includes nationality) is a genuine occupational requirement or qualification for a particular job. The proposed regulation will also include this defence.
- 26) The proposed regulation would form part of the Conduct Regulations, which are enforced by the Employment Agency Standards Inspectorate (EAS). The EAS investigates each complaint of potential abuse of the Conduct Regulations that it receives.

⁸ Northern Ireland has its own regulatory framework for the recruitment sector.

Policy option costs and benefits

27) 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. Where possible, the estimated costs and benefits have been monetised, but it is not possible to monetise all of the potential impacts.

Preferred option: Amend the Employment Agency regulations

Affected groups

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

- The recruitment sector
 - i) Employment businesses
 - ii) Employment agencies
 - iii) Labour providers
 - iv) Temporary agency workers
 - v) Work-seekers looking for permanent employment
- Government (EAS)

The recruitment sector and agency workers: background

29) The recruitment sector is an important part of our economy, contributing over £25 billion in 2012⁹. In 2013, there were around 18,200 employment agencies and employment businesses¹⁰ within the recruitment sector. Slightly under sixty per cent of these (10,690) 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.

⁹ ONS Annual business Survey 2012. In comparison, according to the same source, the manufacture of transport equipment (including motor vehicles and aerospace manufacture) contributed around £20.5bn in 2012, while telecommunications contributed around £26 bn.

¹⁰ ONS, UK Business: Activity, size and location 2013. 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. 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.

Table 1: Recruitment businesses by size, 2013 ONS data

Type of business	Firm size (number of employees)				Total
	Micro (0-9)	Small (10-49)	Medium (50-249)	Large (250+)	
employment agencies	6,185	925	325	55	7,490
	83%	12%	4%	1%	100%
employment businesses	7,170	2,095	1,100	325	10,690
	67%	20%	10%	3%	100%
whole economy	1,912,450	209,710	36,505	8,915	2,167,850
	88%	10%	2%	0%	100%

Around 1.7 million people are placed into work by the recruitment sector each year. In 2012/13 there were around 617,000 permanent placements, up 12% from the previous year. Temporary placements also rose by 2% to 1,128,000 in 2012/13 (Figure 1). These permanent placements and temporary placements represented 2.1% and 3.8% respectively of total employment in the UK in 2012/13.

Figure 1: People placed into work by the recruitment sector

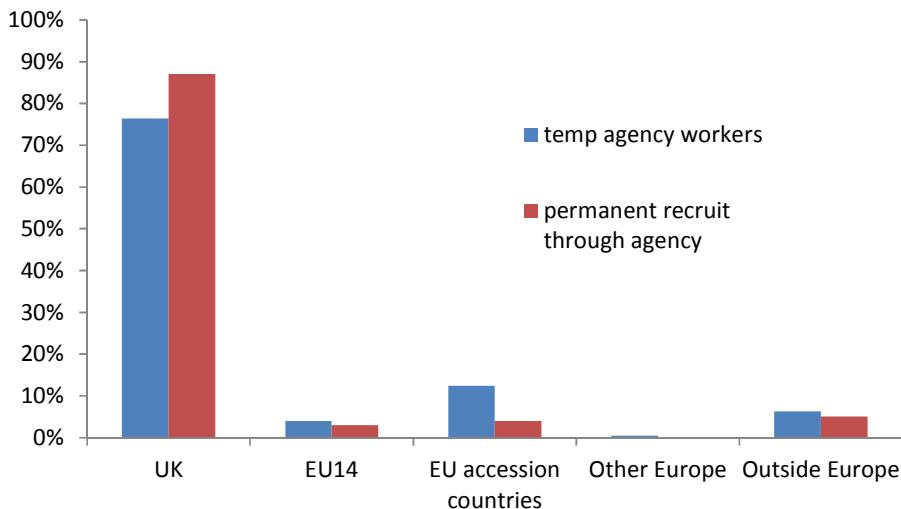


30) The sector supplies workers for a wide range of jobs, ranging from the highly skilled (e.g. IT) to the low paid and low skilled. Temp workers in low skilled occupations have been identified by the Low Pay Commission (LPC) as being vulnerable to exploitation

e.g. social care and the hotel and cleaning industry¹¹. The Employment Agency Regulations aim to prevent any form of exploitation of workers.

- 31) The sector also includes classified job boards that may fall within the definition of ‘employment agency’ or ‘employment business’ as set out in the Employment Agencies Act 1973.
- 32) Evidence from the Labour Force Survey (Q4 2013) suggests that the majority of temporary agency workers who were recruited through employment agencies into permanent posts in the year prior to the survey, were of UK nationality. Over 12% of temporary agency workers came from EU accession countries. However, this does not indicate that they found work from advertisements in their native countries – it is likely that these individuals (of UK or other nationality) may have found their work while in the UK.

Figure 2: Temporary agency workers and recruits in the prior year to permanent posts via employment agencies, by nationality (per cent, 4th quarter 2013).



- 33) We have little evidence that many employment businesses or agencies only advertise overseas in the EU for jobs in Great Britain. There is some limited evidence that a small number of jobs are advertised solely in languages other than English. A small number of recruitment firms (six) we referred to as potentially doing the latter in a debate during Parliamentary Public Bill Committee stage of the Immigration Bill on 19th November 2013¹². Responses to the consultation have indicated that the proposed policy change would encompass both activities.

¹¹ National Minimum Wage: Low Pay Commission Report 2010, March 2010, p99 and 179-180.

¹² Public Bill Committee, Immigration Bill, Parliament, 19th November 2013

<http://www.publications.parliament.uk/pa/cm201314/cmpublic/immigration/131119/am/131119s01.htm> (accessed 25/07/2014)

Costs for all employment agencies and employment businesses

Transition costs

34) We assume that employment businesses and agencies will already need mechanisms to advertise placements, with most having websites. All of the businesses referred to in the Public Bill Committee discussion referred to above had a website. The new regulation would only require the recruitment firm to advertise the placement to people in Great Britain. Businesses likely to be affected would be in a position to post adverts in English on their website.

35) We would expect the familiarisation costs for recruitment firms to be marginal. Most will be aware that they do advertise all British placements to people in Britain, so will be able to assess the new regulation rapidly to know that it would not affect them. Assuming around 10 minutes of an HR manager or director's time¹³, as the regulation is straightforward, we estimate the following cost: The Annual Survey of Hours and Earnings shows that the median hourly wage excluding overtime for an HR manager or director is £23.41. Uprated by a Eurostat estimate of non-wage labour costs as a proportion of wages, at 18.1%, and we get an hourly labour cost of £27.65. We estimate that the one-off familiarisation costs will be £4.61 per firm. Multiplied by the 18,180 recruitment firms, this results in a one-off cost of £84,000 at 2013 prices (rounded to the nearest 1,000).

36) We haven't assessed whether affected employment businesses or agencies would face additional costs because they would need to develop their recruitment processes to cater for English-speaking workers. The regulation does not require the firms to recruit from people in Britain, but it is also likely that the recruitment firms would be able to carry out processes in both English and (an)other relevant EU language(s) – as potential hirers may be English speakers.

On-going costs

37) It is very unlikely that there would be additional on-going costs for employment agencies or businesses not currently advertising overseas exclusively. Regulation 29 of the Conduct Regulations already requires employment agencies and employment businesses to '...keep records which are sufficient to show whether the provisions of the Act and these Regulations are being complied with....' This includes the current regulation 27 which covers advertising and specifies the information that should be contained in every job advertisement. Regulation 27 is being removed as part of the wider reforms to the Conduct Regulations (which will come in to force in April 2015) but the new regulation banning overseas-only advertising is due to come into force prior to

¹³ This is in line with the 5 to 15 minutes estimated familiarisation time for compliant businesses with the penalty regime for non-payment of employment tribunal awards, as set out in the RPC approved Regulatory Triage Assessment(RTA) (RPC confirmation RPC14 – FT-BIS -1997, 24 January 2014)

that. Regulation 29 is due to remain as part of the reformed Conduct Regulations. As employment agencies and employment businesses are already required to keep records on advertising, we do not think the new regulation will place an additional burden on business.

Costs to firms currently solely advertising abroad/not in English

Familiarisation costs

38) For these firms, we estimate that it would take an additional 50 minutes of an HR manager or directors time to understand the implications of the regulation for their business if it were affected. This is in line with other estimates in fit-for-purpose impact assessments for the time taken by businesses to familiarise themselves with legislation and guidance on relatively straightforward legislation¹⁴. Using the same median wage provided above, this additional fifty minutes would cost each affected firm £23.05 including non-wage labour costs.

Other potential costs

39) As mentioned above, it is likely that overseas-only advertising of jobs, or advertising jobs exclusively in a non-English language is currently a breach of the Equality Act 2010. In this case, if the practice being targeted is currently illegal under the Equality Act 2010, then there are no additional costs to these businesses other than the familiarisation costs mentioned above, since they are already breaking the law under the status quo.

40) In the unlikely scenario that overseas advertising were not currently deemed unlawful, there would be some small, additional costs to the employment agencies or employment businesses that currently advertise exclusively overseas or in a non-English language.

41) Under this scenario firms could become compliant with the proposed regulation using freely available machine translation services¹⁵. It is possible to integrate this into the website so that a user can switch between languages, which would be especially useful in the case of the jobs boards. This would be relatively simple for an HTML developer, as it would primarily involve imbedding code generated from a free translation website (which is potentially readily available) into the relevant part(s) of the HTML programme for the webpage (which the developer should know). We assume that this could take 30 minutes to 1 hour of time at most, but have provided hourly unit costs as the sites for website maintenance identified below tend to charge at hourly rates (which may

¹⁴ BIS, Final Impact Assessment: Regulations Prohibiting the Blacklisting of Trade Unionists, January 2010, p8-9 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/245412/10-506-impact-assessment-regulations-prohibiting-blacklisting-of-trade-unionists.pdf and BIS, Phasing out the default retirement age- Government response to consultation: Impact Assessment, January 2011, p22 http://www.legislation.gov.uk/ukia/2011/44/pdfs/ukia_20110044_en.pdf

¹⁵ For instance, the HTML code is readily available from this Microsoft website <http://www.bing.com/widget/translator>

suggest a minimum fee of one hour). The Annual Survey of Hours and Earnings shows that the median hourly wage excluding overtime for an internet or web developer is £14.87. Up-rated to include non-wage labour costs (as above), suggests an hourly labour cost of £17.56. This is broadly consistent with market rates for website maintenance, with a rate of £30 per hour being common¹⁶. Firms may also have pre-existing maintenance contracts with a web design firm, in which case this would pose little or no extra cost. The translation services would enable automated translation of advertisements into or from English, so that ongoing costs for affected agencies would be minimal.

- 42) In discussions with key stakeholders, it was suggested that there were a few cases where posts were advertised by recruitment firms to GB residents in a foreign language in order to sift candidates, as a particular level of language skills were required for the posts. The stakeholders stated that generally the adverts would be translated from an English version, so any cost would be marginal. Potentially, also in these few cases the defence under the Equality Act 2010 (see paragraph 23) may apply, in which case an advert in English may not be required. Furthermore, any failures of IT translation as above would simply require an employee to copy an ad into a freely available online translation service, the costs of which would be minimal.
- 43) There is little evidence that firms would have to change physical advertising practices. As discussed above, we do not expect there to be any additional reporting costs associated with this proposal.

Costs to work-seekers

- 44) We are not expecting any costs to work-seekers.

Costs to the Exchequer

- 45) The EAS inspectorate would enforce this new regulation. Due to the expected low number of cases, we expect any additional costs to be negligible in the context of baseline enforcement activity. These costs have not been monetised.

Benefits to business

- 46) As noted above, there may be a small benefit to hirers resulting from a widening of the pool of potential applicants for posts not previously advertised in Great Britain to individuals in Britain. We expect the impact will be small, as we expect that few recruitment firms have solely advertised posts located in Great Britain in other EEA countries. We have not attempted to monetise these potential benefits.

¹⁶ Kangaroo Media Website Maintenance <http://www.kangaroomedia.com/services/web-development/website-support-maintenance/> (accessed 8th September 2014). It'seeze Website Maintenance Packages <http://www.itseeze-northdevon.co.uk/prices/> (accessed 8th September 2014). People per Hour Freelance Website Maintenance <http://www.peopleperhour.com/freelance/website+maintenance> (accessed 8th September 2014).

Benefits to work-seekers

47) There may be a benefit to GB work-seekers if some GB jobs, previously only advertised overseas, were also advertised in GB. Although evidence suggests that only a very small number of recruitment firms may be advertising jobs based in Britain solely overseas, the number of jobs affected would be some multiple of this number of firms. However, we have no information on the number of jobs affected, or the terms attached to these jobs. Therefore, we have not attempted to monetise these benefits **but we expect these to be small.**

Sensitivities

48) There is limited information about the extent of the practice of employment businesses or agencies advertising placements in Great Britain solely in other EEA countries. We requested information about the extent of the problem in the consultation and were told that trade bodies had no evidence of their members carrying out this sort of advertising. Responses from individuals provided slightly more anecdotal evidence. Further web searching (discussed above) suggests that there may be some incidences of online job boards that may be covered by the proposals, but these are by no means widespread. The available evidence suggests that the practice isn't widespread, but the regulatory cost could be higher if many more firms were involved.

49) Despite not having a robust estimate of the number of firms directly affected, the evidence suggests that this is small. As such, we will take a risk averse approach and assess a range of between 5 and 30 firms.

50) As outlined above, there is a small level of uncertainty over whether the practices targeted by this proposal are covered by the Equality Act. For the purpose of our aggregate cost and benefit estimates, we have assumed that there is no regulatory cost to recruitment firms associated with translation of job adverts. In any case, the low cost of this (as discussed above), and the small number of directly affected firms would suggest that this would have a very limited effect on the overall costs.

51) We have estimated that it would take non-affected recruitment firms 10 minutes to familiarise themselves with the new regulation. Potentially, familiarisation might take slightly longer or slightly less time for these businesses. The RTA for the introduction of penalties for non-payment of employment tribunal awards uses a range of between 5 to 15 minutes. At a hourly labour cost of £27.65 (including non-wage labour costs) this would lead to familiarisation costs for the 18,180 recruitment sector businesses of between £42,000 and £126,000 at 2013 prices.

Summary

52) There are an estimated 18,180 employment businesses or agencies. The underlying familiarisation costs per firm in the sector were estimated at £4.61, which would yield an aggregate cost of £84,000.

53) For the firms who currently advertise jobs exclusively in other EEA countries or exclusively in a language other than English, total familiarisation costs are estimated to range between £115 (5 firms x £23.05 total labour costs) and £692 (30 firms x £23.05 labour costs) with a mid-point of £404.

Table 3: Summary of costs and benefits for the Conduct Regulations reform

	<u>Estimated Costs and benefits</u>		
	<u>High</u>	<u>Best Estimate</u>	<u>Low</u>
<u>Costs</u>			
One-off Familiarisation costs to all employment businesses and agencies		£84,000	
One –off familiarisation costs to directly affected employment businesses and agencies	£115	£404	£692
Potential non-monetised costs	Cost to affected firms of advertising placements located in Great Britain to people in Britain. Negligible cost to the Exchequer of EAS enforcement		
<u>Benefits</u>			
Potential non-monetised benefits	Potential benefit to individuals in Britain from wider choice of jobs, and potential benefit to hirers using recruitment firms due to wider pool of candidates		
Net cost(£m)	£0.0841	£0.0844	£0.0847

54) Overall, the proposed changes are estimated to have a monetised one-off net cost to the economy of £0.084million . There are potential other costs and benefits that have not been monetised.

One-in, two-out

55) The measures contained in this impact assessment are in scope of "One-in-two-out" (OITO).

56) The proposed regulation is straightforward, and not expected to impact on many employment businesses or agencies. It is estimated that familiarisation with the

proposed regulation will be quick for most recruitment firms, to establish that it is not relevant to them, and will cost £0.08m overall.

57) Using the Impact Assessment Calculator, the best estimate is for the annual equivalent net cost to business (EANCB) is £0.01 million over 10 years.

Annex 1

Small and micro business assessment

1. This regulation should not disproportionately affect Small and Micro businesses. Compared to the whole economy, the employment agency and employment business sectors contain a smaller proportion of small and micro businesses (see table 1). Since the policy has minimal impact on businesses overall, it is therefore unlikely to cause any disproportionate costs to Small and Micro businesses so as to justify mitigation. During the consultation we asked whether the proposed new regulation would have any downsides such as costs to business. No respondent suggested that any costs arising would disproportionately affect small or micro businesses. We also specifically asked a few organisations that primarily represent small and micro businesses in the recruitment sector about whether the proposed regulation would have cost implications for these businesses. They did not suggest that there would be any specific cost impact.

Equality Assessment

1. The Department for Business, Innovation and Skills (BIS) is subject to the public sector equality duties set out in the Equality Act 2010. An equality analysis is an important mechanism for ensuring that we gather data to enable us to identify the likely positive and negative impacts that policy proposals may have on certain groups and to estimate whether such impacts disproportionately affect such groups.
2. The proposed policy should be beneficial to equality as it removes a restriction to the labour market by requiring employment businesses and agencies to advertise placements in Great Britain to individuals in Britain. Although it makes certain a requirement that may potentially have already existed under the Equality Act 2010, it will change the enforcement landscape for this requirement.
3. The proposed policy is not expected to have any negative impact on individuals with protected characteristics.

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