

<b>Title:</b> Changes to the Conduct Regulations  <b>IA No:</b> BISLM1601  <b>Lead department or agency:</b> Department for Business, Innovation and Skills  <b>Other departments or agencies:</b>	<b>Impact Assessment (IA)</b>		
	<b>Date:</b> 05/02/2016		
	<b>Stage:</b> Final/EANCB validation		
	<b>Source of intervention:</b> Domestic		
	<b>Type of measure:</b> Secondary legislation		
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<b>Summary: Intervention and Options</b>		<b>RPC Opinion:</b> Green	

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Two-Out? Measure qualifies as
£8.27m	£8.27m	-£0.91m	Yes   OUT

**What is the problem under consideration? Why is government intervention necessary?**

The recruitment sector is regulated by the Employment Agencies Act 1973 and the Conduct of Employment Agencies and Employment Businesses Regulations 2003. The regulations are complicated and difficult to understand, placing a burden on business and potentially acting as a barrier to growth. Government intervention is necessary to streamline the regulations and to ensure that the recruitment sector continues to contribute to a flexible and effective labour market.

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

- To remove some of the current burden from recruitment firms to provide them and their client firms with greater freedom to negotiate arrangements that suit both parties, whilst retaining those regulations required to ensure that people who are looking for work are protected against potential exploitation.
- To improve access to Great Britain-based vacancies for job-seekers in Great Britain.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

No Change Option: Retain the current legislation and regulations.

The Preferred option:

- Amend legislation to remove some of the business to business regulations and those regulations that are at least partially duplicated by other regulation from the Conduct Regulations, simplifying the Conduct Regulations in the process.
- Amend regulation 27A to improve access to Great Britain-based vacancies for job-seekers in Great Britain.

<b>Will the policy be reviewed?</b> It will be reviewed. <b>If applicable, set review date: by April 2021</b>					
Does implementation go beyond minimum EU requirements?				N/A	
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		<b>Micro</b> Yes	<b>&lt; 20</b> Yes	<b>Small</b> Yes	<b>Medium</b> Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)				<b>Traded:</b>	
				<b>Non-traded:</b>	

*I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.*

**Signed by the responsible  
SELECT SIGNATORY:**

Nick Boles ..... **Date:** 24 February 2016

# Summary: Analysis & Evidence

# Policy Option 1

## Description:

### FULL ECONOMIC ASSESSMENT

Price Base Year 2015	PV Base Year 2016	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: 8.27

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low			
High			
Best Estimate	0.749		0.749

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

There is an estimated familiarisation cost of around £0.75 million for employment businesses and agencies, as they have to familiarise themselves with the changes made to the Conduct Regulations.

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

Employment agencies and businesses that currently run generic advertising campaigns elsewhere in the EEA with a view to finding people to fill vacancies in GB will also have to advertise in English in GB (this may include advertising on a website). The evidence suggests that this affects only a very small number of businesses.

We are not expecting there to be any other significant costs for businesses, the Exchequer or work-seekers arising from the change to the regulatory framework.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low			
High			
Best Estimate		1.048	9.0

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

Businesses (recruitment sector and hirers) will benefit from a reduction in administrative burden resulting from cuts in regulation. The estimated annual benefit is £1.05m (best estimate).

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

The reduced regulation, reduced costs and increased freedom for recruitment sector and hiring businesses to negotiate their contracts for recruitment services may potentially lead to greater flexibility and/or efficiency in the UK labour market, which may boost employment and growth.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5
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The monetised costs/benefits of reducing regulation reflect the estimated administrative costs per existing regulation, based on ORC International's 2008 admin burden of employment law study.

### BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: 0.09	Benefits: 1.03	Net: 0.91	Yes	OUT

## Problem under consideration

1. The United Kingdom has one of the most lightly regulated labour markets in the developed world for permanent employees. It is also the third least regulated labour market (after Canada and the US) in terms of temporary contracts<sup>1</sup>. The flexibility of the UK's labour market allows people to easily move between jobs and allows businesses to quickly respond to changing demands. The Government is committed to ensuring that employment law supports and maintains the UK's flexible labour market. However, the Government wants to ensure that it achieves this whilst still delivering the appropriate protection for workers.
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 1.8 million people into work each year<sup>2</sup>. The recruitment sector is regulated by the Employment Agencies Act 1973<sup>3</sup> and the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (the "Conduct Regulations")<sup>4</sup>. The Act and the Conduct 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. Prior to 1973, the sector was subject to an uneven regulatory framework. As the number of agencies increased, some local authorities obtained private Acts requiring agencies to be licensed and operated in accordance with by-laws to protect work-seekers from exploitation. This resulted in an uneven and unsatisfactory regulatory framework. Unscrupulous businesses were able to establish themselves in, and conduct business from, unregulated areas. The Employment Agencies Act 1973 sought to ensure that there was a consistent approach across Great Britain. The licensing provisions of the Act were repealed in 1995. Since then there have been many amendments to the legislation, which has resulted in a very complex set of regulations which place a burden on business, and are not fit for purpose in the UK's modern labour market. The Conduct Regulations are complicated and difficult to understand and have not developed quickly enough to keep up with changes in the recruitment sector.
4. Feedback from sector representatives indicates that businesses generally believe that some regulation is necessary to maintain standards across the recruitment sector. However, they feel there is scope for improving how the sector is regulated.

## Rationale for Intervention

5. The Government believes that legislation should be minimised and used only where work seekers are most at risk of exploitation. Our vision for the recruitment sector is that it will be regulated by the simplest regulatory framework possible, allowing recruitment firms to play an active role in developing their own methods of maintaining standards so they can compete for work seekers and hiring companies. The current regulations impose a costly burden on employment agencies and businesses, in places being complicated and difficult to understand, partly due to a number of revisions since 2003. By removing costly and complex regulations where possible, the Government will help the recruitment sector to continue to contribute to a flexible and effective labour market.
6. The intended effect of the proposed reforms is to remove some of the current burden from recruitment firms to provide them and their client firms with greater freedom to negotiate

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<sup>1</sup> OECD (2013) "Protecting jobs, enhancing flexibility: A new look at employment protection legislation" in OECD Employment Outlook 2013, <http://www.oecd.org/els/emp/Employment-Outlook-2013-chap2.pdf>

<sup>2</sup> The Recruitment and Employment Confederation's Industry Trends Survey 2014/15

<sup>3</sup> Employment Agencies Act 1973, [http://www.legislation.gov.uk/ukpga/1973/35/pdfs/ukpga\\_19730035\\_en.pdf](http://www.legislation.gov.uk/ukpga/1973/35/pdfs/ukpga_19730035_en.pdf)

<sup>4</sup> The Conduct of Employment Agencies and Businesses Regulations 2003  
[http://www.legislation.gov.uk/uksi/2003/3319/pdfs/uksi\\_20033319\\_en.pdf](http://www.legislation.gov.uk/uksi/2003/3319/pdfs/uksi_20033319_en.pdf)

arrangements that suit both parties, whilst retaining those regulations required to ensure that people who are looking for work are protected against potential exploitation.

7. The protection of workers in Great Britain is the reason why the Government intends to amend Regulation 27A of the Conduct Regulations. The regulation currently requires all employment agencies and employment businesses in Great Britain, if they are advertising a job vacancy elsewhere in the EEA, to advertise it in Great Britain in English either before or at the same time as they advertise overseas. However this leaves open the option for agencies to fill vacancies from overseas by means of generic advertising which does not identify a particular vacancy. This is a barrier to workers based in Great Britain, preventing them from accessing some jobs located there, limiting the choice of candidates for employers and thereby undermining the equity and efficiency of the British labour market.

## Policy Objectives

8. The Government has consulted on the new draft regulations. A number of the regulations that will be removed are currently concerned with business-to-business transactions; so, the reforms should provide recruitment firms and their client firms with greater freedom to negotiate arrangements that suit both parties. However, the Government considers it necessary to continue to regulate the sector to ensure that work-seekers are protected against potential exploitation. Our objective is that the new legislation reduces the regulatory burden on business by removing some of the regulations, while retaining those that will ensure the following:
  - Restricting employment agencies and employment businesses from charging fees to work-seekers (with exemptions for certain circumstances in the entertainment and modelling sectors as in the current legislation).
  - Ensuring that employment businesses do not withhold payment from a temporary worker.
  - 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 work-seekers 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.

## Policy options

9. This impact assessment assesses the costs and benefits associated with the preferred option against the counterfactual of retaining the Conduct Regulations as they are. That is the following two options are assessed against each other:
  - No change option:
    - Retain the current legislation and regulations as they are.
  - The preferred option:
    - Amend legislation to remove some of the business to business regulations and those regulations that are at least partially duplicated by other regulations, simplifying the Conduct Regulations in the process.
    - Amend regulation 27A of the Conduct Regulation to require employment agencies and businesses which are carrying out generic recruitment campaigns elsewhere in the EEA for work in Great Britain to also advertise in English in Great Britain.

## Description of preferred option

10. The preferred option assessed in this impact assessment combines deregulatory elements<sup>5</sup> with a low-cost amendment to regulation 27A<sup>6</sup>. The changes are assessed in a single impact assessment, because they relate to the same regulations and are a single policy package. Combined, they address the policy objectives as outlined above. The preferred option predominantly reduces and simplifies the existing set of regulations. At the same time it addresses one area in which the Government sees a need to protect the interest of workers in Great Britain. Overall, the changes are estimated to be reducing the regulatory burden faced by businesses in the recruitment sector.<sup>7</sup>
11. The Conduct Regulations will be simplified and amended to remove those regulations that primarily cover business-to-business transactions, or at least partly duplicate requirements contained in other UK legislation. Those regulations subject to removal are not required to provide regulatory protection for work-seekers to ensure the outcomes outlined in the policy objectives above are met.
12. Following consultation, the Government proposes to remove the regulations as set out in table 1.

**Table 1 Proposed regulations to be removed**

<u>Regulation number</u>	<u>Reason for removal</u>
Regulation 9	Mainly business to business activity
Regulation 11	Mainly business to business activity. Regulation 16, which 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, provides sufficient safeguards to work-seekers. This means that the removal of regulation 11 has little impact on work-seekers.
Regulation 17	Business to business activity
Regulation 23, except provisions 1)c), 1)d) and 2) which ensure clarity on which recruitment firm is responsible for paying the work-seeker when more than one such business is involved in the contract	Business to business, and activity not relevant to the policy objectives
Schedules 4 & 5 to be partly reduced	Business to business, linked to other regulations being removed
Schedule 6	Business to business, linked to other regulations being removed

13. Regulation 9 requires that employment businesses and agencies present themselves to hirers and work-seekers in accordance with how they are acting in a particular transaction. Regulation 11 restricts employment businesses and agencies (except those in the entertainment and modelling sector) from agreeing employment contracts on behalf of hirers or work-seekers without their

<sup>5</sup> The Regulatory Policy Committee confirmed these elements as deregulatory. See the Regulatory Triage Assessment on “Reforming the regulatory framework for employment agencies and employment businesses: 2<sup>nd</sup> Consultation”, RPC-3063(2)-BIS

<sup>6</sup> The Regulatory Policy Committee confirmed this element as low cost. See the Regulatory Triage Assessment on “Ending overseas-only recruitment by employment agencies and businesses”, RPC-3057(1)-BIS

<sup>7</sup> Consultation responses strengthened the perception that businesses will not face significant cost from the only change that is regulatory in nature.

permission. Regulation 17 prevents an employment business from providing services to a hirer unless it has agreed terms with them. Regulation 23 parts a) and b) prevent an employment business or agency from entering into a contract or arrangement with another employment business or agency with a view to the latter providing recruitment services unless the former has checked that the latter is fit to act as an employment business or agency, and the respective businesses have agreed in what capacity they will each act. Schedules 4 and 5 relate to the details of the employment business or agency's business records in relation to work-seekers and hirers, while Schedule 6 relates to the parts of Regulation 23 that is proposed to be removed.

14. Following consultation, the Government has decided to retain regulation 27, which ensures that job advertisements by employment businesses or agencies must have certain components such as the location of the post, rate of pay and nature of the work. The majority of consultations responses indicated that this regulation provides necessary protection for workers and imposes only very limited (if any) costs on businesses.
15. Finally, the proposal is to also amend 27A of the Conduct Regulations to improve access to Great Britain-based vacancies for job-seekers in Great Britain. Specifically, employment agencies and businesses which are carrying out generic recruitment campaigns elsewhere in the EEA for work in Great Britain (i.e. without identifying a particular vacancy) will also be required to advertise in English in Great Britain (this may include advertising on a website). They will be required to do this either at the same time, or in the 28 days prior to, advertising elsewhere in the EEA. Employment agencies and employment businesses that do not recruit from overseas will not be affected. There will not be an additional burden on them.

## Background

### Policy

#### *Current regulations*

16. The 1973 Act and the Conduct Regulations seek to ensure that work-seekers, either those looking for permanent or temporary work, have free access to the labour market, are able to move between jobs within the labour market, and can use the recruitment sector with confidence. The regulatory framework falls into the following themes:
  - Protection for workers
    - i) Free of charge access to the labour market for temporary and permanent work seekers at the point of entry (Regulations 5, 13, and Schedule 6).
    - ii) Free movement between jobs for work-seekers, subject to reasonable temp-to-perm transfer fees between businesses (Regulation 10). Restrictions on detrimental action relating to work-seekers working elsewhere (Regulation 6).
    - iii) Temporary workers are paid for the work they do, whether the employment business has been paid by the hirer or not and there is clarity on who is responsible for paying the worker (Regulations 12, 15, 21 and 23).
    - iv) Obligations on an employment agency or business where a work-seeker is required to work away from home – such as providing details of travel arrangements and accommodation arrangements and potentially costs/interest free loans (Regulation 24).
  - Content of terms
    - v) An employment business or agency is required to inform and agree terms with the work-seeker in writing (Regulation 14 and 15).
    - vi) An employment business cannot provide services to a hirer until it has agreed terms with them (Regulation 17).
  - Protection for vulnerable people
    - vii) Employment businesses and agencies are required to carry out an identity check of the work-seeker and to ensure that the work-seeker has the experience, training,

qualifications and necessary authorisation (e.g. Criminal Records Bureau checks) (Regulations 19 and 22).

- Health and safety

- viii) Employment businesses and agencies are required to obtain health and safety information from a hirer before a suitable work-seeker is provided (Regulations 18 and 20).

- Entertainment and modelling

- ix) An entertainment or modelling agency is required to inform and agree terms with the work-seeker in writing – including details of the fee charged and work-finding services provided (Regulations 14 and 16).
  - x) Restrictions on charging of fees for additional services (Regulations 5 and 26)
  - xi) Cooling off periods in which workers have the right to cancel an agreement for services without detriment to themselves (Regulations 5 and 26)
  - xii) Money received by agencies from hirers on behalf of the work-seeker must be paid into and held in client accounts (Regulation 25).

- Industrial disputes

- xiii) An employment business or agency will be prevented from supplying work-seekers to replace a striking employee (Regulation 7).

- Advertisements

- xiv) The regulations ensure that job advertisements by employment businesses or agencies must have certain components such as the location of the post, rate of pay and nature of the work (Regulation 27).
  - xv) Where an employment business or agency advertises a specific vacancy elsewhere in the EEA, it must also do so in English in GB, although defences may apply (Regulation 27A).

- Recruitment firm practices

- xvi) Employment agencies are restricted from (directly or indirectly) paying work-seekers on behalf of the hirer to whom they have introduced the work-seeker (Regulation 8). However, employment agencies in the entertainment and modelling sector are exempted from this (Regulation 25).
  - xvii) Employment businesses and agencies are required to present themselves to hirers and work-seekers in accordance with how they are acting in a particular transaction (Regulation 9).
  - xviii) Employment businesses and agencies (except those in the entertainment and modelling sector) are restricted from agreeing employment contracts on behalf of hirers or work-seekers without their permission (Regulation 11).
  - xix) Employment businesses and agencies are required to gather information about a work-seeker before introducing or supplying them to a hirer (Regulation 19).
  - xx) Employment businesses and agencies are required to ensure that the work-seeker and hirer are aware of legal and professional requirements for a position, and that the work-seeker is suitable for the post, including informing hirers of new information to the contrary post-hiring (Regulation 20).
  - xxi) Employment businesses and agencies must share as appropriate the information they have gathered about the hirer and work-seeker in relation to a post with the other party (Regulation 21).

There are also a number of additional regulations including those relating to record-keeping (Regulation 29), definitions of terms, confidentiality (Regulation 28) and civil liability (Regulation 30).

### *Other regulation*

17. Other regulations ensure that some of the regulatory requirements would remain in place even if they were to be removed from the Conduct Regulations. Essentially, under these other regulations,

the Advertising Standards Authority has standards for employment advertising, which it enforces. However, these regulations largely cover elements of regulation 27 of the Conduct Regulations. The Government has decided to retain regulation 27 in any case following consultation responses.

#### *Trade Association Codes of Practice*

18. A number of recruitment sector trade associations have published codes of practice or codes of conduct. The Recruitment and Employment Confederation (REC), representing a substantial part of the industry, has the most comprehensive. Of the regulations that the Government proposes to remove, the REC Code of Practice covers confidentiality in line with Regulation 17. Other trade association codes of practice also cover similar ground on confidentiality and agreement of terms with clients.

#### *Enforcement regime*

19. The Employment Agencies Act and the Conduct Regulations are enforced by the Employment Agencies Standards inspectorate (EAS), based in BIS. EAS respond to complaints received via the Acas Helpline and also carry out targeted enforcement in high risk areas in order to protect the most vulnerable agency workers. In the 2013 consultation (see below) the Coalition Government consulted on whether it was necessary for the Government to enforce the recruitment sector legislation or whether individuals should be able to enforce their rights at an employment tribunal.
20. The majority of respondents to the consultation felt that Government enforcement is necessary as it acts as a deterrent and helps to maintain standards across the recruitment sector. We therefore intend to retain Government enforcement but have moved to a more focussed and targeted enforcement regime. In line with the Regulator's Code, the EAS focuses its work on encouraging and promoting compliance. Prosecutions or prohibitions are only pursued in cases of sustained and wilful non-compliance.

#### *2013 consultation*

21. The Coalition Government conducted a 12-week consultation on potential reforms to the Conduct Regulations and their enforcement between 17 January and 11 April 2013. The proposals were aimed at minimising the regulatory burden for businesses, while ensuring that regulatory protection remained in areas where workers are most at risk from exploitation.
22. There were 286 formal responses to the consultation which came from a wide range of interested parties, including businesses of different sizes, government, social enterprises, individuals, legal representatives, trade unions and business representatives.
23. Most respondents agreed that the proposed regulatory framework should achieve the four key outcomes identified. There was support for focussing the legislation on protections for work-seekers while providing the sector with greater freedom to decide how it operates, with many respondents welcoming the proposed reduction in regulatory burden on business.
24. The majority of respondents considered that there weren't circumstances where employment agencies or businesses outside the entertainment and modelling sector should be able to charge fees to work-seekers. Many argued that it is vital to maintain an open and free route to employment. However, there were also specific references to online recruiters and some respondents felt that job boards should be excluded from the definition of 'employment agency'. There was majority support from respondents that it was necessary to legislate to ensure there is clarity on who is responsible for paying a temporary worker for the work they have done. We said that we would carry out a further short consultation on draft legislation after it had been prepared.

#### *2015 consultation*

25. 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.



26. 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.
27. 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. The consultation did not indicate that this would affect many businesses and impose significant costs on the sector. Seven respondents actually felt that the amendment to regulation 27A would affect employment agencies and businesses positively, ten felt that there would be no impact, four thought that it might affect those businesses negatively, while nine did not provide a view on this question. Overall, the consultation responses confirmed the Government's view that this amendment can further protect workers in Great Britain without causing any significant burden to the recruitment sector.
28. 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.

### The sector

29. There are two legally defined types of business models in the sector; *employment agencies* which introduce people to hirers for permanent employment; and *employment businesses* (also known as temping agencies) which introduce people to hirers for temporary work. Many recruitment businesses operate as both employment agencies and employment businesses.
30. The recruitment sector is an important part of our economy, contributing over £30 billion to the economy in 2014<sup>8</sup>. In 2015, there were 22,445 employment agencies and employment businesses<sup>9</sup> within the recruitment sector. Around forty-seven per cent of these (10,660) were primarily employment businesses, supplying hirers with workers on a temporary basis.
31. 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, while there are relatively more small businesses in the sector. Overall, the size distribution of businesses appears reasonably similar to that of the overall economy. Table 2 presents the structure of the sector by types and sizes of recruitment businesses.

**Table 2: Recruitment businesses by size, (UK Business: Activity, size and location 2015)**

Type of business	Firm size (number of employees)				Total
	Micro (0-9)	Small (10-49)	Medium (50-249)	Large (250+)	
employment agencies	10,060 85.4%	1,220 10.4%	420 3.6%	85 0.7%	11,785 100%
employment businesses	7,120	2,070	1,115	355	10,660

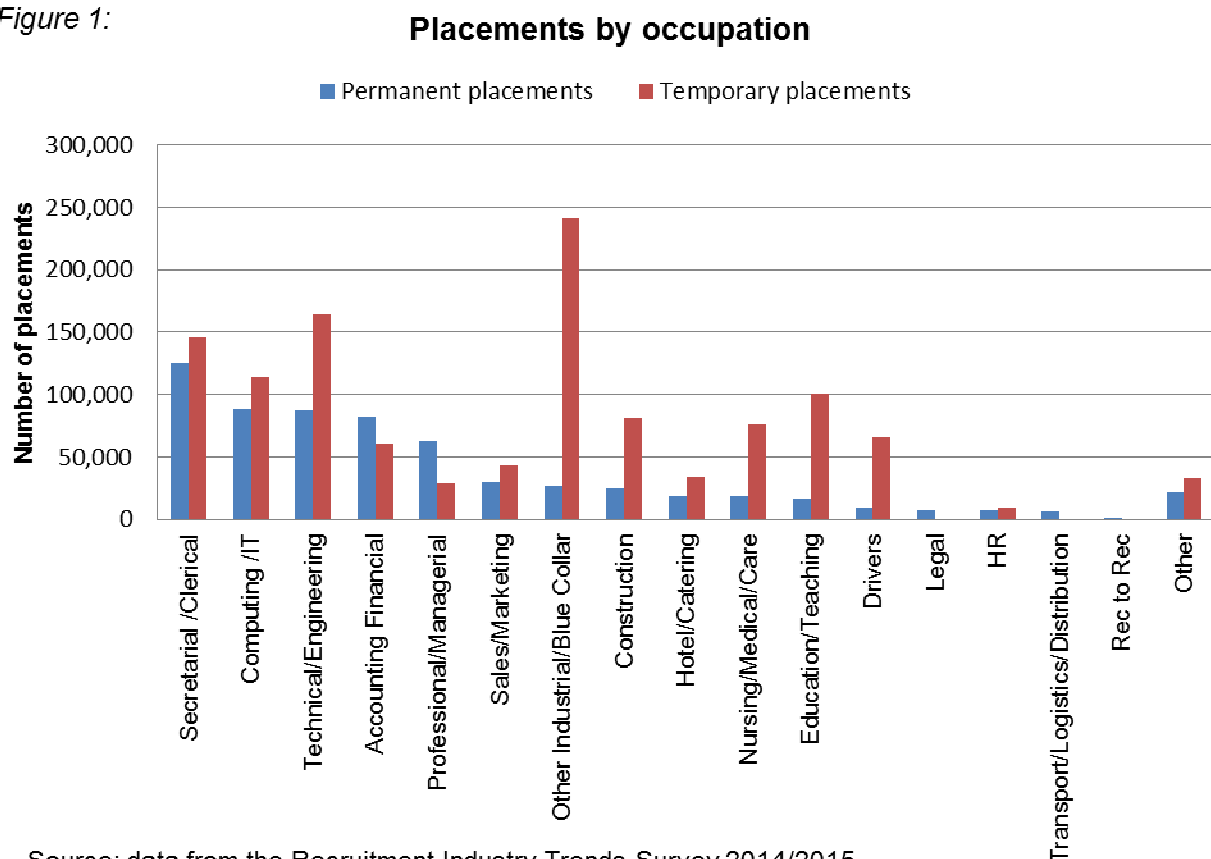
<sup>8</sup> Approximate gross value added at basic prices. ONS Annual Business Survey 2014.

<sup>9</sup> ONS, UK Business: Activity, size and location 2015. 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.

	66.8%	19.4%	10.5%	3.3%	100%
whole economy	2,173,355	227,770	38,940	9,350	2,449,415
	88.7%	9.3%	1.6%	0.4%	100%

32. In 2014/15 around 1.8 million people were placed into work by the recruitment sector. There were 634,000 permanent placements and temporary placements rose by 3.6% to 1,198,000 in 2014/15.<sup>10</sup> These permanent placements and temporary placements represented 2.0% and 3.8% respectively of total employment in the UK in the third quarter of 2015.<sup>11</sup> According to the latest REC Industry Trends, in 2014/15 90.5% of industry turnover was achieved through temporary/contract business while approximately 9.5% was generated through permanent placements.
33. The sector supplies workers for a wide range of jobs, ranging from the highly skilled (e.g. IT) to the very low paid and low skilled. Figure 1 provides an overview of the types of jobs that employment agencies and businesses place workers in. Temp workers in some 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 industry<sup>12</sup>.

Figure 1:



## Costs and benefits (business impacts)

34. The Conduct Regulations specifically regulate the behaviour of employment business and agencies. However, other parties interacting with employment businesses and agencies, such as

<sup>10</sup> Recruitment and Employment Confederation (REC): Recruitment Industry Trends Survey 2014/15,

<https://www.rec.uk.com/news-and-policy/help-and-advice/research/latest-research/recruitment-industry-trends-2014-2015>

<sup>11</sup> ONS Labour market statistics.

<sup>12</sup> National Minimum Wage: Low Pay Commission Report 2010, March 2010, p.99 and 179-180.

those seeking work and hiring companies (private businesses as well as hiring public sector organisations), are likely to be affected by the changes as well.

35. The proposed policy will remove regulation 9, 11, 17, 23 (except provisions 1)c), 1)d) and 2) and schedule 6 from the Conduct Regulations and schedules 4 and 5 will be amended. Following consultation responses, the Government has decided to retain regulation 27 as it is seen to include important protection for those seeking work. The policy will also amend regulation 27A, which will now also apply to generic recruitment campaigns carried out by employment agencies and businesses.

### Assumptions

36. The analysis of the reduction in administrative requirements and the monetised benefits is based on figures for the cost of administrative burden estimated based on ORC International's figures (see below). The administrative burden costs were those specifically and only resulting from meeting the regulatory requirement. Therefore, these were expected to exclude the cost of administration that recruitment businesses may have undertaken to meet business needs, which also enabled these businesses to meet their regulatory obligations.
37. For benefits from the reduction in administration due to the removal of some of the Conduct Regulations, this impact assessment takes the monetised administrative burden figures for the specific regulations being removed, except where other legislation requires that employment businesses and agencies carry out the same activities covered by the Conduct Regulations. It is likely that recruitment firms will still carry out some of the administration that is no longer required under the proposed new regulatory framework. This is due to the continuation of particular business models and the influence of other regulation and industry Code of Practice that place some requirements on recruitment firms and/or hirers.
38. This impact assessment will aim to attribute costs incurred by businesses as regulatory when the regulations are the direct cause for these costs. If businesses decide to go beyond the standards required by the regulations (for example, due to a voluntary code of conduct), then this is, in this case, not attributed as a regulatory cost. Where the removal of a regulation does not lead to a reduction in the regulatory burden because the requirements are still covered by another regulation, no reductions in the regulatory burden have been monetised in this impact assessment. However, if firms continue to meet the current requirements due to the existence of a voluntary industry Code of Practice, this is seen as a reduction in regulatory burden, as businesses are voluntarily going beyond the statutory requirement.
39. It is likely that a Code of Practice was partially developed due to the existence of the regulations. However, it is also a result of the competitive nature of the sector and the industry's concern to be viewed positively. For this reason, and accounting reasons<sup>13</sup>, the removal of elements of the Conduct Regulations that are not covered by other regulations are scored as reductions in the regulatory burden, even if firms might still voluntarily carry out the requirements. The impact assessment will nevertheless highlight those areas that are covered by a Code of Practice to provide a full picture.<sup>14</sup>

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<sup>13</sup> Suppose the Code of Practice would cease to exist and the Government decided to reintroduce some of the regulations in response. This would likely be seen as an increase in the regulatory burden that should be scored as such. If the initial removal of the regulations in this hypothetical example had not been scored as a reduction in the regulatory burden, then this would wrongly overall score as an increase in regulatory burden, although the regulatory burden is identical at the beginning and the end of the process.

<sup>14</sup> This also shows that the majority of regulations removed are currently not covered by a Code of Practice and that the assumption explained in paragraphs 37-38 have a limited impact on the aggregate figures for the estimated reduction in the regulatory burden.

## Familiarisation costs

40. All employment agencies and businesses, whether or not they currently engage in those activities affected by the amendment of regulation 27A, will have to familiarise themselves with the proposed changes to the Conduct Regulations.
41. As the revised regulatory framework will be based on the existing set of Conduct Regulations, familiarisation should be relatively straightforward for recruitment firms. Employment agencies and employment businesses should have knowledge of the existing regulations (including other regulations that apply to them) and have processes in place to enable compliance with them. The familiarisation cost therefore reflects their need to become informed of which regulations remain in the proposed framework. The costs of familiarisation are estimated based on the labour costs to the recruitment firm resulting from an estimated amount of time that the HR manager or director will need to familiarise themselves with the revisions to the Conduct Regulations.
- Labour costs: According to the 2015 provisional data from the Annual Survey of Hours and Earnings, the average hourly earnings of an HR manager or director, excluding overtime, were £26.67 in 2015. Based on Eurostat data for 2013 on labour costs, it is assumed that UK employer's additional non-wage labour costs amount to 19.8% of wage costs on average. The total employer's labour cost for an HR manager or director is hence estimated at £31.95. Given the lack of information available on earnings for self-employed individuals, HR managers or directors are used as a proxy for owner-managers of recruitment firms.
  - We assume that more time is necessary for familiarisation in larger businesses due to increased complexity of these firms. However, we assume that this increase is less than proportional, meaning that smaller businesses are affected by familiarisation costs disproportionately when compared to their size. We assume that familiarisation will take one hour on average for small and micro-businesses and one and a half hours for medium and large businesses. Overall, the necessary familiarisation time should be limited given existing knowledge of the Conduct Regulations and the deregulatory nature of the removal of existing regulations. Given that small and micro-businesses make up the vast majority of businesses, it will, across all businesses, take an average of just above one hour for the HR manager or director to familiarise themselves with the new regulatory framework. This is similar to the approach taken in previous impact assessments in relation to regulatory changes, for instance in relation to the phasing out of the default retirement age<sup>15</sup>.
  - Based on the figures in table 2, there are an estimated 22,445 employment businesses and agencies in the UK. Applying the assumed familiarisation times, we derive a ***estimate for familiarisation costs to all businesses in the sector, at 2015 prices, of £31.95 x 1 x 22,445 = £749,000*** (to the nearest £1,000). Table 3 provides a breakdown of this figure by business size.

**Table 3: Familiarisation costs to all employment agencies and businesses by business size**

	micro	small	medium	Large	total
Number of businesses	17,180	3,290	1,535	440	22,445
Hours of familiarisation	1	1	1.5	1.5	1.04 (weighted average)
<b>Familiarisation costs</b>	<b>£548,912</b>	<b>£105,118</b>	<b>£73,566</b>	<b>£21,087</b>	<b>£748,684</b>

42. The majority of the proposed changes to the regulatory framework, as they involve removal of regulations do not require employment businesses or agencies to adapt their systems. There are therefore no other transition costs for the recruitment sector as a whole.

<sup>15</sup> BIS, Phasing out the default retirement age- Government response to consultation: Impact Assessment, January 2011, p.22 [http://www.legislation.gov.uk/ukia/2011/44/pdfs/ukia\\_20110044\\_en.pdf](http://www.legislation.gov.uk/ukia/2011/44/pdfs/ukia_20110044_en.pdf)

43. However, those employment agencies or businesses which recruit from elsewhere in the EEA, by means of generic advertising campaigns, for jobs in Great Britain will be affected by the changes to regulation 27A. These businesses must familiarise themselves with the effect that the requirement to place generic advertisements in Britain, either at the same time as, or in the 28 days prior to, the overseas advertisements has on their business.
44. There is very little evidence on the number of businesses which seek to attract worker-seekers from other EEA countries by means of generic advertising without advertising in Great Britain. Based on previous work in this area, it is likely that the number of businesses undertaking this activity is very small<sup>16</sup>.
45. It is likely that the level of employment businesses and agencies covered by the Conduct Regulations seeking to attract worker-seekers from other EEA countries by means of generic advertising without advertising in Great Britain is analogous to the number of employment businesses and agencies advertising exclusively in other EEA countries. The number of these businesses is likely to be very small. Information on the precise number is very limited, but six businesses were referred to as potentially doing so in a meeting on the Parliamentary Public Bill Committee discussing the Immigration Bill on 19 November 2013.<sup>17</sup> Consultation responses do not indicate that the number of businesses engaging in such activity is significantly higher. Taking a conservative approach, we assume there to be 20 such businesses. For these firms, we estimate that it would take an additional 50 minutes of an HR manager or director's time to understand the implications of the regulation change for their business<sup>18</sup>. Applying the same wage as above, we **estimate an additional familiarisation costs for businesses affected by the amendment to regulation 27A of £31.95 x 5/6 x 20 = £532.50.**
46. This figure is marginal in comparison to the familiarisation costs faced by all employment agencies and businesses. **The total familiarisation costs (rounded to the nearest £1,000) for employment agencies and businesses are hence unchanged at £749,000 in total.**
47. We do not anticipate any familiarisation costs for hiring businesses or public sector organisations. Hirers' interaction with employment businesses or agencies will continue to be on an ongoing or one-off contractual basis. While the removal of some current regulations will enable greater freedom for recruitment firms to vary their offering on services and fees, hirers will be able to choose providers which suit their requirements. The reforms would be expected to provide further flexibility in an already competitive recruitment sector, where employment businesses and agencies already face competition from other routes to take on workers.

## Ongoing costs and benefits

### *Costs*

48. The majority of the proposal is for a reduction in regulatory requirements for recruitment sector businesses. We do not anticipate any ongoing administrative costs for employment agencies and businesses that are not affected by changes to regulation 27A. For these businesses the direction of change should be in reducing compliance costs.
49. Employment businesses and agencies which recruit from elsewhere in the EEA, by means of generic advertising campaigns, for jobs in Great Britain will incur additional ongoing costs associated with the creation and placement of adverts in English in Great Britain. We anticipate that many will choose to place such advertisements on their website but other advertising methods will be permitted (as with the existing regulation 27A). As explained, we estimate the number of

<sup>16</sup> 'Prohibiting Employment Agencies and Employment Businesses from Advertising Jobs Exclusively in other EEA countries': [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/372493/bis-14-1153-government-response-to-consultation-on-prohibiting-employment-agencies-and-employment-businesses-from-advertising-exclusively-overseas-2.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/372493/bis-14-1153-government-response-to-consultation-on-prohibiting-employment-agencies-and-employment-businesses-from-advertising-exclusively-overseas-2.pdf)

<sup>17</sup> Public Bill Committee, Immigration Bill, Parliament, 19 November 2013: <http://www.publications.parliament.uk/pa/cm201314/cmpublic/immigration/131119/am/131119s01.htm>

<sup>18</sup> This is in line with the estimated additional familiarisation time for this group of businesses in the November 2014 Impact Assessment 'Prohibiting Employment Agencies and Employment Businesses from Advertising Jobs Exclusively in other EEA countries'.

businesses affected by this to be limited (no more than 20) and restricted to firms supplying workers in certain sectors of the economy, such as the hospitality, tourism and sport sectors<sup>19</sup>. There is currently no robust way to estimate the potential costs involved. However, given the limited number of cases involved and how quickly a job vacancy can be uploaded to a website, we consider this cost to be marginal.<sup>20</sup>

50. It is unlikely that there should be any costs to hiring businesses or public sector organisations. The reduction in regulations should provide recruitment firms and hiring organisations with greater freedom to negotiate the contractual arrangements between them. For functions which the policy proposal will de-regulate, hirers and recruitment firms will have the option of agreeing more cost effective procedures than those currently required by regulation. This should benefit both hirers and recruitment firms. The competitiveness of the recruitment sector<sup>21</sup>, and the existence of many different routes into work from unemployment or inactivity, should ensure that both hirers and recruitment firms share the benefits of reduced regulation in the recruitment sector. Research by Forde and Slater also identifies that some contractual arrangements between recruitment firms and hirers enabled hirers to place pressure on recruitment firms' margins. On this basis, it makes sense to consider costs to business as a whole, rather than consider recruitment firms and hirers separately (while taking into account that a proportion of hirers are public sector organisations).
51. We also consider it to be unlikely that hiring companies and organisations will opt to advertise in other EEA countries directly without going through an employment agency or businesses as a result of the changes to regulation 27A, which would equate a loss of business for these recruitment firms. We estimate the number of cases to be affected by the changes to be small and to be focussed on a limited number of specialised sectors. The amendment to regulation 27A is likely to not increase the costs to employment agencies and businesses significantly on a per case basis, and so it seems unlikely that any costs potentially passed on in increased prices to hiring companies would be significant enough to make it not worthwhile for the hiring companies to recruit via an employment agency or business.

### *Benefits*

52. Fundamentally, the costs to employment agencies and businesses associated with matching someone seeking work with the hiring company decrease, because the proposal removes some of the administrative burdens associated with this process. The additional surplus created are expected to be split between employment agencies and businesses (in increased profits) and hiring companies (in the form of some of the cost reduction being passed on as reduction in prices for recruitment services).
53. The extent to which the benefits fall either on employment agencies and businesses or hiring companies depends on individual bargaining and the competitiveness of the recruitment sector. This analysis is mainly concerned with the overall impacts on business, rather than distributional concerns.
54. The benefit to business following the proposed reduction in regulation would be the amount of administrative burden estimated for those regulations being removed. The estimates of the administrative cost of compliance used in the monetisation of costs and benefits below are based on the Employment Law Administrative Burdens Survey<sup>22</sup>, conducted in 2008 by ORC International on behalf of BERR (a predecessor department of BIS). As part of this work, a survey of administrative costs and burdens facing employment businesses and agencies was carried

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<sup>19</sup> Please see (Galbraith, A, 2012) *Sector Skills Assessment: Hospitality, Tourism and Sport*, Wath-upon-Deerne, UKCES, pp. 42 for a discussion on reliance on EEA/non-EEA labour supply by sector.

<sup>20</sup> As a hypothetical example, assume that all 20 businesses affected had to advertise 25 cases each per year and all used their websites. Assuming that the process to create a job vacancy on the website took two hours per case and that this would be done by a 'Public Relations Professional' (average wage in 2015 of £17.16 (ASHE 2015), uprated by 19.8% to £20.56 ) this would result in an annual cost of £21,000, not affecting aggregate figures significantly.

<sup>21</sup> C.Forde and S.Slater, *The Role of employment agencies in pay setting*, Acas research paper 05/11, 2011 identifies that the recruitment sector has a relatively low concentration ratio, with the largest 8 companies accounting for 25% of the UK market, and the industry "remains dispersed", p11.

<sup>22</sup> E. Lambourne et al, *Employment Law Admin Burdens Survey, Final Report*, December 2008 (BERR/ORC International).

out<sup>23</sup>. This survey specifically related to the Conduct Regulations, and provided estimates for the administrative burden for a number of the specific regulations contained therein. This survey followed the Standard Cost Model (SCM).

- 55. ORC International’s survey was designed to produce statistically robust results, and therefore forms the basis of the estimates for monetising administrative burden used here. However, to get more detail, or estimates for regulations not covered by the ORC International survey, figures from PWC’s Administrative Burdens Measurement Exercise, carried out for BIS predecessor DTI in May 2005<sup>24</sup> were used to help derive estimates. The PWC exercise, using an SCM model to estimate administrative costs and burdens for a wide range of regulations including employment law, was intended to provide a benchmark, but not to provide statistically representative results (see page 5 of the Final Report). As the PWC analysis generally produced much higher figures than the ORC International analysis, for these estimates, where PWC’s figures have been used they have been multiplied by 0.11 (the ratio between the ORC International admin burdens total for the Conduct Regulations, and PWC’s for the same specific regulations). We therefore take a conservative approach to estimating the benefits from reduced administrative burden. The ORC figures are also seen as more representative because that survey was specifically designed around the Conduct Regulations and to be representative; figures by PWC were not meant to be representative, but to act as a benchmark. The GDP deflator was used to uprate the estimates to 2015 prices.
- 56. Table 4 below sets out the estimated annual administrative burden for each regulation to be (partially) removed. Those regulations and schedules to be removed that are estimated to not result in a reduction in administrative burden (based on ORC estimates) are not included. These are regulation 9 and schedules 4, 5 and 6.

**Table 4: Estimated administrative burdens of regulations to be removed**

<u>Regulation number</u>	<u>Estimated administrative burden (2015 prices, £ thousands)</u>
Regulation 11	262
Regulation 17	466
Regulation 23, except provisions 1)c), 1)d) and 2	320
<b>Total</b>	<b>1,048</b>

- 57. In order to identify how much of the benefits are likely to fall on public sector organisations which are the customers for some of the services provided by employment businesses and agencies, we need to identify the share of placements into the private and public sector and make an assumption about how the surplus described in paragraphs 50-52 is likely to be shared between the recruiting firms and the hiring firms and organisations.
- 58. According to the Labour Force Survey<sup>25</sup>, around 82% of placements made via an employment agency were to the private sector. Therefore, we estimate that around 18% of recruitment sector activity is with public sector hirers, with 82% being conducted with private sector organisations.
- 59. Reflecting the reasonably competitive nature of the recruitment sector, and the fact that some recruitment firms have long-term relationships with hirers, we assume that 50% of the benefits of reduced administrative burden is passed to hiring organisations (the process of how additional surplus is shared is explained in paragraphs 50-52).

<sup>23</sup> ORC International, Employment Law Admin Burdens Survey 2008: Employment Agency Survey Annex  
<sup>24</sup> DTI, Administrative Burdens Measurement Exercise, Final Report, June 2006 (DTI/PWC)  
<sup>25</sup> A four quarter average was used from LFS quarterly datasets from 2014Q4 to 2015Q3.

60. Using these figures we estimate that the overall annual benefits summarised in table 4 will ultimately fall on the parties involved (employment agencies and businesses, private sector hirers, and public sector hiring organisations) as follows:
- Employment agencies and businesses      £ (thousands) 524
  - Private sector hiring business              £ (thousands) 430
  - Public sector hiring organisations              £ (thousands) 94
61. This analysis estimates that ultimately £954,000 of the annual benefits will accrue to private sector businesses, while £94,000 accrue to public sector hiring companies. However, this analysis makes assumptions about the level of pass-through (i.e. how much of the benefits to recruitment companies due to decreased administrative burden will be passed on to hiring companies, for example via a fall in prices).

### Other non-monetised effects

62. The proposed removal of some of the Conduct Regulations is expected to enable some additional flexibility in business-to-business arrangements between recruitment firms and hirers. This may have some potential benefits in increasing the efficiency of the recruitment sector as a facilitator for individuals looking for work, and for hirers in looking to fill temporary or permanent vacancies. These potential changes could lead to the employment businesses and agencies obtaining a greater share of work-finding activity, or to changes in existing market share within the recruitment sector. However, there could also be a benefit to the economy if the additional flexibility allowed to employment businesses and agencies impacts positively on labour market efficiency. One result could be to make it easier for individuals to access the labour market, and from that related economic and social impacts, such as increased output. Other factors, such as the performance of the UK economy, would influence the extent to which such potential benefits may be realised. We have not attempted to monetise these potential benefits.
63. There may be a small benefit to hirers from the amendment to regulation 27A resulting from a widening of the pool of potential applicants for posts not previously recruited for using generic campaigns in Great Britain. We expect the impact will be small, as we expect that few recruitment firms supply workers from overseas having attracted them with generic advertising. We have not attempted to monetise these potential benefits.
64. We haven't assessed whether employment businesses or agencies affected by the amendment to regulation 27A would face additional costs because they would need to develop their recruitment processes to cater for English-speaking workers. It is likely that the recruitment firms would be able to carry out processes in both English and (an)other relevant language(s) anyway – potential hirers are likely to be English speakers as they are recruiting for GB-based positions.
65. We do not expect negative impacts on job-seekers and/or agency workers. We have specifically identified regulations whose removal will not affect those seeking employment negatively. The Government has taken consultation responses into consideration and has decided to retain regulation 27, the removal of which was seen by a majority of respondents to weaken the protection of workers.

## **Sensitivity analysis**

66. The Standard Cost Model, according to the 2008 ORC International report, defines administrative burden as the “*part of the administrative costs that businesses sustain simply because it is a requirement from regulation*”<sup>26</sup>. However, while the activities no longer to be regulated might not be essential to providing a work-finding service, it is likely that to a greater or lesser degree a proportion of recruitment firms will continue to carry these out in some form. This will be due to

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<sup>26</sup> E.Lambourne et al, Employment Law Admin Burdens Survey Final Report, December 2008, (BERR/ORC International), p2.



some firms wanting to market themselves on the comprehensiveness of the service they provide, or because hirers see a benefit in paying for employment businesses or agencies to carry out particular functions. There is also pressure from within the industry, such as that applied through the trade associations<sup>27</sup>, for recruitment firms to operate to certain standards to enhance the reputation of the industry and is not seen as a cost caused by regulatory burden.

67. To estimate the extent to which employment businesses and agencies may continue to carry out activities that will no longer be regulated under the reformed framework, we have looked at whether:
  - other regulation requires activity on behalf of businesses, such as on health and safety; and
  - whether industry codes of practice issued by recruitment sector trade associations address the activities covered by the regulations being removed.
68. Some elements of regulation 17 are covered by existing industry codes of practice. The reduction in administrative burden from the removal of regulation 17 may be partially limited due to industry standards: for instance, the REC Code of Practice requires that hirers are made aware of all fees, charges and services provided by an employment business or agency, though it does not require all the processes outlined in the regulation.
69. If businesses were to maintain those administrative procedures in line with the code that are not longer required by the Conduct Regulations, we would estimate businesses to only realise about 50% of the benefits associated with the removal of regulation 17 in table 4. This estimate is based upon firstly the perspective that a substantial part of the recruitment industry (especially in terms of the proportion of placements) is involved with trade associations and will therefore abide by industry codes. However, industry codes of practice are not as prescriptive as to the procedures required to comply. The annual benefit realised by businesses would be reduced to £0.815m (from £1.048m). We have explained why this impact assessment will, in any case, account for the full figure as a reduction in the regulatory burden.<sup>28</sup>
70. Another assumption is that the benefits from reduced administrative burden will be shared equally between recruitment firms and hiring organisations. While this assumption does not affect the EANCB estimate as such, because pass-through is not accounted for in its calculation, changes to the assumption will affect what share of the benefits will ultimately fall on private sector businesses. Assuming that the cost reduction would not be passed on to hiring companies would result in an increased annual benefit to private sector businesses of £1.048m (as opposed to the estimate of £0.954m provided in paragraph 62.) Assuming that all benefits are passed on to hiring companies and organisation results in annual benefits to private sector businesses of £0.860m.

## Risks

71. The main risks to the achievement of the policy objective are that:
  - the removal of some of the Conduct Regulations does not lead to the estimate reduction in administrative burden and effective negotiation between recruitment firms and hiring organisations; and
  - the new regulatory framework does not provide sufficient protection for work-seekers.
72. Recruitment firms already have to engage with hiring organisations within the current regulatory framework. There are different business models operating within the sector<sup>29</sup>, including developments involving ICTs, and around 11,785 employment agencies and 10,660 employment businesses. Hirers are therefore already faced with some choice in the market, and recruitment firms will have experience of negotiating on the service provided and related costs. The reforms

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<sup>27</sup> Both APSCO and REC Codes of Practice specifically refer to behaving in ways to enhance the reputation of the recruitment sector.

<sup>28</sup> See paragraphs 37-39 and footnote 13 for an explanation

<sup>29</sup> C.Forde and S.Slater, The Role of employment agencies in pay setting, Acas research paper 05/11, 2011, p42.

are expected to lead to some expansion in the range of choice, and in the scope for negotiation. Given the existing experience of the recruitment sector, the risk that this might make the recruitment sector less effective would appear to be very small.

73. The revised Conduct Regulations will maintain statutory protection for work-seekers as highlighted by the Government's decision to retain regulation 27. The de-regulation does mean that recruitment firms are less restricted in how they deal with work-seekers in some areas. However, the protections remaining in the Conduct Regulations (and other regulations and codes of practice) mean that the work-seeker should be aware of key terms and conditions offered for a placement, will be paid the agreed amount for the work done, and will not be required to take non-work finding services offered. The remaining protections should also ensure that they are not hindered in moving between jobs or from temporary to permanent employment. As government enforcement will continue in these areas, the risk of the reduction in regulations leading to greater exploitation of work-seekers is considered small.

### **Business impact target (BIT), one-in, three-out (OI30) and equivalent annual net cost to business (EANCB)**

74. The measures contained in this impact assessment are in scope of the BIT.
75. The Conduct Regulations are designed to regulate the activities of employment businesses and agencies, and these enterprises will need to familiarise themselves with the reduced regulatory framework. As the new framework will keep some of the existing regulations, while removing others, the recruitment sector should already be familiar with them. It is estimated that familiarisation with which regulations have remained and/or changed and which have been removed will cost recruitment sector firms £0.749m (table 3) in total one-off costs.
76. Our best estimate for the annual direct benefits due to the reduced regulatory burden in total is £1.048m. In line with the Better Regulation Framework Manual we have not included potential pass-through effects such as the ones analysed in paragraphs 57-61 in the calculation of the EANCB.
77. Overall, our **best estimate is for an annual equivalent net cost to business (EANCB) of -£0.91m (or an annual net benefit of £0.91m).**

**Table 5: Monetised costs and benefits for Business included in the EANCB estimate**

	£ millions (2015 prices)
<u>Transition costs</u>	
Familiarisation with revised Conduct Regulations	0.749
<u>Ongoing benefits</u>	
Reduction in administrative costs due to reduced regulations	1.048
Equivalent annual net cost to Business	-0.91

### **Small and Micro-Business Assessment (SaMBA)**

78. As this is a measure on the fast track that is deregulatory overall, a SaMBA is not required. However, we have provided a breakdown of the affected sector and familiarisation costs by business size in tables 2 and 3.

79. Overall the policy proposal to reduce the regulatory burden on recruitment sector firms, enabling them to devise their own approaches to meeting customer needs in areas no longer regulated, should benefit all businesses. Currently, all employment agencies and employment businesses are expected to be compliant with the Conduct Regulations: reducing the extent of the regulations should allow small and micro enterprises as much as large and medium enterprises to reduce administration in line with the regulatory reductions proposed and market requirements.
80. As the policy is expected to be beneficial to business, including small and micro businesses, we see no justification for any exemption (full, partial or temporary) for small and micro businesses. We also see no justification for an extended transition period for small and micro businesses, or varying requirements for these businesses. As the policy is deregulatory, there is no rationale for enabling small and micro businesses to have to opt-in voluntarily to the reform. As the policy is not expected to generate additional costs for business, we see no justification for a financial aid package for small and micro businesses. As the reform overall mainly involves the removal of some existing regulations, which will affect all recruitment firms, we do not think that a specific information campaign for small and micro businesses is justified.

## **Equalities assessment**

81. 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.
82. The overall effect of the policy proposal is to reduce the regulatory burden of the Conduct Regulations on the recruitment sector, while maintaining key protections for work-seekers. This means that the revised Conduct Regulations will continue to:
  - a. restrict employment agencies and employment businesses from charging fees to work-seekers (with exemptions for certain circumstances in the entertainment and modelling sectors as in the current legislation);
  - b. ensure that employment businesses do not withhold payment from a temporary worker;
  - c. ensure 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;
  - d. prevent employment businesses and employment agencies from penalising work-seekers for terminating or giving notice to terminate a contract;
  - e. prevent employment businesses from enforcing unreasonable terms on a hirer when a temporary worker takes up permanent employment with that hirer; and
  - f. ensure that employment agencies and employment businesses keep sufficient records to demonstrate they have complied with the regulations.
83. The Conduct Regulations will also continue to protect work-seekers from having non-work-finding services imposed on them by employment businesses or agencies in return for work-finding services.
84. A key part of the policy development was to ensure that the regulations would continue to provide key protections for work-seekers, and this included taking into account protection statutorily required under other regulations. Alongside maintaining key protections to work-seekers, the policy aims to enable greater flexibility in the recruitment sector through a removal of regulations covering business-to-business functions. This potentially may lead to more options for work-seekers, including more opportunities for work.
85. Existing data sources available do not enable the comprehensive measurement of temporary agency workers, or work-seekers looking for permanent placements via employment agencies.

The ONS Labour Force Survey (LFS) data underestimates the levels of agency workers.<sup>30</sup> Care should be taken when using LFS data to make comparisons of the levels of agency workers with the rest of the population. We are working closely with the ONS to obtain more robust estimates of agency workers. It is not possible to be certain of how many agency workers there are in the UK. The Recruitment and Employment Confederation (REC) estimate the number of agency workers in the UK. Their most recent estimate suggests that on any given day in the 2014/15 financial year, 1.2m agency workers were engaged in the UK labour market<sup>31</sup>.

86. Looking at LFS four-quarter averages from 2014Q4 to 2015Q3, there is some evidence that compared to those in employment who were not agency workers, agency workers were statistically more likely to be:
- men than women. 53% of those in employment who are not agency workers are male, while 56% of agency workers identified in LFS are male;
  - younger, with 30% of identified agency workers being between the ages of 20 and 29 (compared to 20% of non-agency workers) and 24% being above the age of 50 (compared to 30% of non-agency workers);
  - black ethnic minority, and less likely to be white (10% of identified agency workers were black ethnic minority compared to 2% of non-agency workers, 79% of identified agency workers were white compared to 89% of non-agency workers); and
  - less likely to be of no religion (30% vs 36%), more likely to be Muslim (6% vs 4%) or Christian (60% vs 55%).
87. As noted above, the policy has maintained key protections for work-seekers using the recruitment sector, so we do not expect that there will be negative equality impacts resulting from the changes. Consultation response indicated that the removal of regulation 27 would be likely to affect job-seekers negatively, and the Government has, based on that evidence, decided to retain regulation 27.
88. The change to regulation 27A is introduced specifically to address an issue of equality in the current form of the regulation. This change will give job-seekers in Great Britain access to Great Britain-based vacancies that they might currently not have access to.

## Families assessment

89. The changes to the Conduct Regulations largely cause a reduction in the regulatory burden faced by employment agencies and businesses while maintaining the protection of job-seekers. There is no evidence that this policy will have any significant impact at the level of the family per se.
90. There is no evidence for any direct impacts on family formation, on families going through key transitions such as becoming parents, or on the ability of family members to play a full role in family life. There is also no evidence that it will specifically affect those families most at risk of deterioration of relationship quality and breakdown.

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<sup>30</sup> As defined in the Agency Workers Regulation 2010 “agency worker” means an individual who: (a) is supplied by a temporary work agency to work temporarily for and under the supervision and direction of a hirer; and (b) has a contract with the temporary work agency which is: (i) a contract of employment with the agency, or any other contract to perform work and services personally for the agency.

<sup>31</sup> REC (2015) *The Recruitment and Employment Confederation's Industry Trends Survey 2014/15*, available: <https://www.rec.uk.com/news-and-policy/help-and-advice/research/latest-research/recruitment-industry-trends-2014-2015>