

## **Post-implementation review Report: The Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2016**

### **Introduction**

1. Agency workers' employment rights are protected by three main pieces of legislation that directly cover the recruitment sector. These are the Employment Agencies Act 1973 (the 1973 Act), the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (the 2003 Conduct Regulations) and the Agency Workers Regulations 2010 (AWR).
2. The AWR are enforced by the individual (via an employment tribunal), while the 1973 Act and the Conduct Regulations are enforced by the Employment Agency Standards (EAS) Inspectorate on behalf of agency workers.
3. The 1973 Act and the Conduct Regulations distinguish employment agencies (businesses that find permanent work for people) from Employment Businesses (businesses which find temporary roles). They also set out the minimum requirements expected of employment agencies and employment businesses.
4. The 1973 Act and the Conduct Regulations aim to "*protect the interests of persons availing themselves of the services of such agencies and businesses*", which refers to employment agencies and employment businesses as defined in section 13 of the 1973 Act.
5. To achieve that, the 1973 Act and the Conduct Regulations set out the minimum standards employment agencies and employment businesses must comply with in their relationships with work-seekers and with hirers. This framework includes several key protections such as:
  - restrictions on charging fees for being found work (section 6 of the 1973 Act),
  - ensuring that temporary workers are paid in full for hours worked (see regulation 12 of the Conduct Regulations),
  - ensuring that work-seekers are provided with sufficient information before they register with an employment business or agency and are provided information in relation to each assignment (for example about Health and Safety or any additional qualifications that may be required),
  - ensuring that hirers are provided with relevant information about the suitability of the work-seeker.
6. It should be noted that there are purely business-to-business interactions (such as those only involving hirers and employment agencies and employment businesses) which fall outside the scope of the regulations.
7. This post-implementation review aims to assess specified parts of the Conduct Regulations (parts 2, 3, 5 and 7) as amended in 2016, and seeks to do this by assessing the objectives of the relevant parts of the Conduct Regulations, whether these were

being achieved and were still relevant, and whether these could be achieved with less regulation.

8. We targeted stakeholders to respond to the survey who were in scope of those regulations and were therefore in a position to comment on whether the changes had achieved their intended effect and to provide views on the impacts.

### **The Government's policy objectives**

9. The policy objectives of amending the Conduct Regulations in 2016 were two-fold.
10. The first aim was to remove burdensome business-to-business regulations where possible, with the aim of giving employment agencies and businesses greater freedom in the way they work. There should still be sufficient protections for the work-seekers making use of employment agencies and employment businesses to find work.
11. The second objective was to improve access to job vacancies in Great Britain for work-seekers in Great Britain.

### **Consulting on the proposals to amend the Conduct Regulations**

12. Under section 12 of the Employment Agencies Act 1973 (see section 12(2)), it is a requirement that the Secretary of State consults "*such bodies as appear to him to be representative of the interests concerned*" before making any changes.
13. In line with this statutory commitment, the Government consulted those representative bodies on its proposed changes to the Conduct Regulations between 13 October 2015 and 23 November 2015. The Government published its response to this consultation in February 2016, which is available [here](#).
14. After considering the responses to the consultation, the Government decided to proceed with its proposals to amend the Conduct Regulations, in line with the majority of the proposals. Following consultation, the Government decided to retain regulation 27, which specifies the information that should be included in job adverts made by employment agencies and employment businesses to ensure sufficient protections remained in place for workers.
15. The 2016 regulations came into force on 8 May 2016.

### **Summary of changes implemented in 2016**

16. To implement these policy objectives, the Government made the following changes to the 2003 Conduct Regulations.
17. The Government revoked the following elements of the Conduct Regulations:
  - **regulation 9** – it required that employment agencies and employment businesses present themselves to hirers and work-seekers in accordance with how they are acting in a particular transaction. It prevented employment agencies and employment businesses from purporting to act on a different basis, for example by informing the work-seeker they were acting as an employment agency while

informing the hirer they were acting as an employment business. This restriction no longer applies.

- **regulation 11** – it prevented employment businesses and employment agencies from entering into a contract on behalf of hirers or work-seekers without their permission. This restriction no longer applies.
- **regulation 17** – it regulated a business-to-business activity. It prevented an employment business from providing services to a hirer unless it had agreed terms with them. This requirement no longer applies.
- **regulation 23** – this applies in situations where more than one agency or employment business is involved. Parts a and b prevented an employment business or employment 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 employment agency, and the respective businesses have agreed in what capacity they will act. This related to checks that businesses performed on each other, and as such was a business-to-business regulation. This regulation was removed, except for provisions 1c, 1d and 2, which ensure clarity on which recruitment business is responsible for paying the work-seeker where more than one such business is involved. Worker protections were maintained.
- **Schedule 6 of the Conduct Regulations** – this covered business to business activity and related to the elements of regulation 23 that were removed.

18. The Government amended and retained the following regulations:

- **regulation 16** – this applies to services provided by employment agencies in the entertainment and modelling sectors. We amended this for consistency, by removing the reference to regulation 11 which was removed.
- **regulation 27A** – the amendment extended the coverage of the requirement for businesses advertising elsewhere in the EEA to advertise in English in Great Britain for specific vacancies. The effect was that employment agencies and employment businesses who wish to advertise elsewhere in the EEA must, due to the change, now also advertise in Great Britain in English for generic advertising campaigns not just for campaigns to fill specific vacancies.
- **Schedules 4 and 5 of the Conduct Regulations** – these relate to the details of the employment business or employment agency's records in relation to work-seekers and hirers.

### **Estimated impact**

19. The reforms referred to above were predicted to have a minimal impact on the status quo and the cost to businesses was assessed as *de minimis*.

20. Most the changes involved the removal of regulations and did not therefore require employment agencies and employment businesses to adapt their systems. The original impact assessment estimated that there would be limited familiarisation costs of £0.75 million to employment agencies and employment businesses. This was estimated based on the assumption that familiarisation would be straightforward because affected businesses would have prior knowledge of the regulatory framework and have processes in place to ensure compliance. The familiarisation costs were then estimated based on the labour costs to recruitment businesses from an estimated amount of time that an HR manager or director would need to familiarise themselves with the changes.

21. It was estimated that the removal of certain regulations should provide recruitment firms and hiring organisations with more freedom, and therefore the ability to negotiate more cost-effective contractual arrangements. In addition, the impact assessment noted that the costs to employment agencies and employment businesses of matching a work-seeker with a hirer would decrease, due to removal of some administrative burdens associated with the process. However, it was also estimated that some businesses may continue to carry out activities no longer required following the removal of regulations, due to codes of practice from industry trade bodies.
22. The removal of certain regulations would enable additional flexibility in some business-to-business arrangements between recruitment businesses and hiring organisations, and it was noted this could contribute to the increased efficiency of the recruitment sector.
23. Overall, the original impact assessment estimated that the annual direct benefits due to the reduced regulatory burden would amount to £1.048 million. When taken together with the familiarisation cost, the net cost to business per year was estimated to be -£0.91m (or an annual net benefit of £0.91 million).
24. The post-implementation review reflected this assessment by undertaking a proportionate approach, which is set out below under the heading methodology.

**Scope of the PIR:**

25. When the changes were implemented in 2016, a statutory review provision was inserted into the 2003 Conduct Regulations.
26. This review provision, set out in regulation 34, requires the Government to carry out a review of the following parts of the 2003 Conduct Regulations as amended:
  - part 2 (general obligations) – this includes regulations 5 to 12
  - part 3 (requirements to be satisfied before services are provided) – this includes regulations 13 to 17
  - part 5 (special situations) – this includes regulations 23 and 24
  - part 7 (miscellaneous) – this includes regulations 27 to 34
27. The review provision requires the Government to publish a report that sets out:
  - the objectives intended to be achieved by the provisions in scope of the review,
  - the extent to which those objectives have been met and,
  - whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.
28. The first report should be published “before the end of the period of five years, beginning with the day on which the Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2016 come into force.”
29. As set out above, this post-implementation review aims to assess specified parts of the Conduct Regulations (parts 2, 3, 5 and 7) as amended in 2016, and seeks to do this by assessing the objectives of the relevant parts of the Conduct Regulations, whether these were being achieved and were still relevant, and whether these could be achieved with less regulation.

30. It should also be noted that this post-implementation review sought to investigate the level of awareness of the changes among stakeholders. This may have influenced the response rate, as being unaware of the amendments could influence taking part in the survey.

### **Methodology:**

31. To gather views, the review was performed as two online surveys. This approach was taken so that the maximum number (and distribution) of stakeholders could be approached. It was also chosen so that the data collection would not be onerous on the participants.
32. The introduction to the first survey summarised the changes implemented by the 2016 regulations. It summarised the policy intent and how this was implemented, by setting out which regulations were removed entirely, and which were amended, along with short explanations. This survey asked whether participants had noticed changes and, if so whether they were positive or negative. Participants were then be asked to elaborate on their answer if relevant.
33. The second survey also provided participants with a brief introduction to assist them when completing the survey. It explained that this survey was focussed on understanding the impact of the 2016 changes in the context of the relevant parts of the Conduct Regulations as amended in 2016. Participants were asked whether they understood the objectives of the relevant parts of the Conduct Regulations, whether these were being achieved and were still relevant, and whether these could be achieved with less regulation. As with the first survey, participants were given the opportunity to expand on their answer if relevant.
34. For both surveys, the questions were designed to be limited and open-ended so that participants could feel free to contribute but not suffer from respondent fatigue. This survey was sent to a range of businesses and trade bodies within the recruitment sector, as well as worker representatives.
35. The number of respondents for the first survey was 22, this is of a potential 49 that opened the survey. These numbers should be noted, as the introduction to the survey specified what it would be asking about and if participants wanted to share their views. There was also limited interest among stakeholders for the second survey. There were two substantive responses out of a potential 27 participants who opened the survey. A lack of participation could indicate the absence of a strong view on the matters covered by the surveys.
36. Regarding demographics, the numbers are too small to separate into groups, but responses were received from businesses, trade bodies and worker representatives within the recruitment sector.

### **Assessment of the impact of the measures:**

#### *Survey 1*

37. The key theme from the responses in the first survey was that the majority of people believed there had been no change to burdensome legislation.

38. Questions that investigated whether work-seekers are as protected as they were before followed a similar pattern, with participants stating that these regulations did not affect these protections.
39. When investigating whether job seekers in Great Britain had improved access to vacancies in Great Britain, the majority stated that no change had occurred or that they had not noticed a change. The answers to the questions within this survey, while from a small sample, heavily indicate that the changes to the regulations provide no additional burdens to businesses, there is no signal of the removal of worker's rights, and that regulation changes remained largely unnoticed.
40. The conclusion from these results indicates that the changes introduced to the Conduct Regulations have not been felt, or in some cases noticed, by stakeholders. This in turn is indicatively supported by the lack of responses to the survey itself. The survey was shared to a wide variety of stakeholders (including workers and employers) over several weeks.

### *Survey 2*

41. The substantive responses to the second survey indicated that the policy objectives of the relevant parts of the Conduct Regulations in scope of this review were being met and that the objectives of these parts of the Conduct Regulations were still appropriate.
42. There were some limited suggestions about how to increase flexibility for businesses and reduce administrative burdens further. These comments relate to relevant parts of the 2003 Conduct Regulations as amended, and not only to the changes implemented in 2016.
43. The complexity of the Key Information Document was highlighted as an area for potential change, where the requirements could be simplified. Another suggestion was made that the requirements around the terms to be issued to work-seekers (regulations 14 and 15) could be amended to avoid potentially limiting the options of work-seekers and creating an unnecessary administrative burden on business. It was also highlighted that the rules around advertising jobs (regulation 27) might be amended so that businesses have more flexibility in how experience and pay are advertised and to better reflect businesses' recruitment practices (i.e. that they recruit for a particular skill rather than a role).
44. The lack of regulation of umbrella companies was also highlighted as an area for action. The Government is aware of this and has already committed to address it, by expanding state enforcement for agency workers to include umbrella companies. It was also highlighted that there is not uniform compliance across the recruitment sector with these regulations. A suggestion was made that government could introduce a regular compliance test.

### *Conclusion*

45. Stakeholders had a reasonable period in which to respond. The changes implemented in 2016 did not create additional burdens for business or negatively impact individuals' rights or access to jobs in Great Britain. This is supported by the low response rate, despite the surveys being shared widely over several weeks. It is also supported by the fact that the responses received indicated that no change had occurred. The responses which highlighted options for simplification were new interventions government could make to further work with the recruitment sector and do not suggest a negative outcome arising from the policy implemented in 2016.

46. This supports the assumption made in 2016 (and set out in the original impact assessment) that the changes to the Conduct Regulations would be below the De Minimis threshold and have a minimal impact on business.

**Next Steps:**

47. This post implementation review was undertaken to meet a statutory review provision (regulation 34) that the Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2016 inserted into the 2003 Conduct Regulations.

48. We have reviewed the impact of the relevant parts of the 2003 Conduct Regulations as amended in 2016. The Government will retain these changes without any further amendments at this time.

49. The Government will consider the merits of the additional suggestions for simplification of the regulations and will continue to consider how to maintain and improve protections for agency workers in the context of a rapidly changing labour market, including by working with business to improve levels of compliance. The Government may therefore consider potential future changes to the Conduct Regulations. Any future changes would be subject to the same process of consultation.

<p><b>Title:</b> The Conduct of Employment Agencies and Employment Businesses (amendment) regulations 2016</p> <p><b>PIR No:</b> BEIS038(PIR)-21-LM</p> <p><b>Original IA/RPC No:</b> BISLM1601</p> <p><b>Lead department or agency:</b> BEIS</p> <p><b>Other departments or agencies:</b> N/A</p> <p>Contact for enquiries: <a href="mailto:ryan.gausden@beis.gov.uk">ryan.gausden@beis.gov.uk</a> <a href="mailto:Hannah.toeman@beis.gov.uk">Hannah.toeman@beis.gov.uk</a> <a href="mailto:Michael.jacob@beis.gov.uk">Michael.jacob@beis.gov.uk</a></p>	<b>Post Implementation Review</b>
	<b>Date:</b> 16/12/2021
	<b>Type of regulation:</b> Domestic
	<b>Type of review:</b> Statutory
	<b>Date measure came into force:</b> 06/04/2016
	<b>Recommendation:</b> Keep
	<b>RPC Opinion:</b> Not Applicable Choose an item.

**1. What were the policy objectives of the measure?** (Maximum 5 lines)

There were two policy objectives. The first was to remove burdensome legislation where possible and give agencies and businesses greater freedom in the way they work, while retaining sufficient protections for workers. The second was to improve access to job vacancies in Great Britain for work-seekers in Great Britain.

**2. What evidence has informed the PIR?** (Maximum 5 lines)

We sought views from affected stakeholders via two online surveys. The first survey focussed specifically on the 2016 changes: we had 22 responses. The second survey sought views on the relevant parts of the Conduct Regulations (as amended). We got 2 substantive responses. Responses came from a range of businesses and trade bodies in the recruitment sector, as well as worker representatives.

**3. To what extent have the policy objectives been achieved?** (Maximum 5 lines)

We had a relatively small number of responses from stakeholders. In line with our analysis in 2016, feedback from stakeholders suggested the impacts were minimal or in some cases not noticed. No negative unintended consequences (by adding burdens or reducing worker protections) were noticed and the changes did maintain worker protections

Sign-off for Post Implementation Review: Chief economist/Head of Analysis and Minister

***I have read the PIR and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.***

Signed:  
**Paul Scully MP**  
Minister for Small Business, Consumers and Labour Markets  
Minister for London

Date: 16/12/2021



## Further information sheet

Please provide additional evidence in subsequent sheets, as required.

### **4. What were the original assumptions?**(Maximum 5 lines)

Hirers and work-seekers could both be affected by the changes. Administrative costs were those arising directly from meeting the regulatory requirements and exclude any costs incurred to conduct normal business. The monetised costs were familiarisation costs for HR managers or directors to familiarise themselves with the updated regulations, and on the impact on businesses who needed to change practices to comply with the amended regulation 27A (advertising). The Costs were not counted where businesses voluntarily complied voluntarily, due to a code of conduct. The benefits were derived the reduction in regulation and costs associated with matching an individual to a role, they were not monetised where the requirement survived elsewhere.

### **5. Were there any unintended consequences?** (Maximum 5 lines)

Responses to the surveys did not identify any unintended consequences arising from the changes to the regulations implemented in 2016.

### **6. Has the evidence identified any opportunities for reducing the burden on business?** (Maximum 5 lines)

Participants commented on the complexity of regulation 13A (the Key Information Document) and suggested this could be simplified. They also suggested requirements about the issuing and content of terms for work-seekers and advertising could be simplified.

### **7. How does the UK approach compare with the implementation of similar measures internationally, including how EU member states implemented EU requirements that are comparable or now form part of retained EU law, or how other countries have implemented international agreements?** (Maximum 5 lines)

Most of the changes implemented by this policy removed regulations. The change to regulation 27A did not implement an EU requirement, it was a UK initiative. This policy also does not apply to recruitment outside the EEA, for which businesses must already comply with the resident labour market test. Therefore, there are no relevant comparisons to make with either EU requirements or international agreements.