

BIS | Department for Business
Innovation & Skills

**CONDUCT OF EMPLOYMENT
AGENCIES AND EMPLOYMENT
BUSINESS REGULATIONS 2003**

**GOVERNMENT RESPONSE TO
CONSULTATION OF MARCH 2009**

NOVEMBER 2009

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Executive Summary

1 The consultation focused on a package of proposed amendments to the Conduct of Employment Agencies and Employment Businesses Regulations 2003 ('the Conduct Regulations') that govern the private recruitment industry. We sought views from interested parties and those who may be affected by proposals designed to protect the most vulnerable agency workers and clarify lines of responsibility between agencies and hirers in order to further reduce regulatory burdens. We wanted to address a range of issues of interest to different audiences as set out below.

Upfront fees charged by entertainment and modelling agencies

2 First, we wanted to look at practical steps to tackle the bad practice of some rogue agencies in the entertainment and modelling sector where, despite the introduction of a seven day cooling off period in April 2008, there is evidence of continued abuse of the ability to charge upfront fees,. We proposed to either ban the practice of taking upfront fees or to tighten the Conduct Regulations to address particular concerns.

Clarifying lines of responsibility and reducing regulatory burdens

3 We were aware that a massive increase in online recruitment had raised concerns about the extent to which online recruiters were able to comply with current requirements to check the identity and suitability of individuals introduced to hirers. We therefore wanted to seek views on this issue, as well as to explore how we could reduce burdens on business by introducing greater clarity and eliminate unnecessary duplication and enable a dynamic UK sector to continue to grow and innovate. We proposed to remove the requirement for employment agencies who introduce workers for permanent employment to undertake suitability checks because the burden for undertaking these in the vast majority of cases rests with the hirer. However, we proposed that safeguards should remain in place for those working with people under 18 or other vulnerable groups.

Other areas

4 We sought views on additional areas in the Conduct Regulations that could offer scope for reducing administrative burdens, or where we considered measures may be necessary to offer greater protection to vulnerable agency workers.

Medical Deaneries

5 Finally, we proposed the restoration of Post Graduate Medical Deaneries, who are responsible for the recruitment and training programme of junior doctors and junior dentists to NHS employers, to their previous position as a body exempt from employment agency legislation.

Summary of the responses

6 The Government received a total of 349 substantive responses to the consultation and is grateful to everyone who took time to comment. The consultation covered a variety of measures so the responses reflected the fact

that many respondents were only interested in specific aspects of the proposals that related to their own interests. The majority of the responses, around two-thirds, were about upfront fees. The position of temporary workers employed by umbrella companies was the next most popular subject. These responses came from a broad spectrum of interests ranging from individuals (who made up almost half of all respondents), businesses, employment agencies and employment businesses, trade bodies and trade unions. A detailed breakdown can be seen below.

Respondent	No. of responses
Micro business (up to 9 staff)	103
Small enterprise (up to 49 staff)	19
Medium enterprise (50 to 250 staff)	12
Large enterprise (over 250 staff)	5
Representative organisation / Trade association	10
Trade union or staff association	10
Individual	174
Local government	2
Legal representative	2
Other	12
Total	349

7 A detailed analysis of the comments received and an explanation of how the Government proposes to respond in respect of the key areas covered by the consultation is set out in the next chapter.

8 The consultation also prompted a number of additional questions and suggestions from stakeholders which we will also deal with in this response. In particular, we will cover the question of licensing in the recruitment industry and the status of online agencies and job boards.

9 We will also use this response to set out the additional measures we are putting into place to strengthen enforcement of workplace rights and to raise standards in the industry. We believe that this package of measures will benefit the industry by providing clearer guidance and will ensure an even playing field by increasing the sanctions and ability of the relevant enforcement bodies to punish those that exploit vulnerable workers and undercut legitimate recruitment companies.

Government Response

Measures to protect vulnerable workers

a) *Upfront fees charged by entertainment and modelling agencies*

10 The Conduct Regulations only allow the charging of upfront fees in this sector in certain limited circumstances. The consultation focused on circumstances where an agency is permitted to charge an upfront fee for inclusion of information in a publication which is for the purpose of finding work-seekers employment or for providing hirers with information. In April 2008 a cooling off period was introduced prohibiting the taking of such fees until seven days have elapsed. The overwhelming response from stakeholders was that the cooling off period has not proved effective at preventing abuse of the upfront fee provision, since unscrupulous businesses have sought ways to work around it. Concern was also expressed about levels of awareness and the effectiveness of enforcement of these provisions. Respondents pointed in particular to a typical scam in the modelling sector where modelling agencies hold open casting sessions in hotels and convince members of the public that they can make a living from modelling. They charge them an upfront fee for inclusion of their details in a publication and then no work ever materialises. Extras and walk-ons were also highlighted by many respondents as groups vulnerable to being scammed.

11 In terms of a solution to address the problem, the responses were more varied. Some respondents supported an outright ban on any upfront fee, including those for services such as photographs and show reels, being of the view that there is no justification for a legitimate agency to charge an upfront fee and that the only fee should be commission charged out of earnings. There was also a call from some to reintroduce a licensing system and for increased resource for the Employment Agency Standards Inspectorate. Others expressed concern about the impact that a ban would have on business and favoured instead a mix of better enforcement and a tightening of the existing regulations along the lines outlined in the consultation document.

12 It is clear from the responses that some organisations charge work-seekers upfront fees as a legitimate part of their business model. These tend to be casting directories in the entertainment industry which charge work-seekers a fee for including their details in online and hard copy databases that are very well established in the industry as a means for casting directors to hire actors. Many of those respondents who supported an outright ban in principle recognised the value of these directories to the industry and were concerned that if they were put out of business as a result of a ban, it would stop a legitimate route to work for many in the acting and entertainment industry.

13 Some respondents argued that a solution to this would be to redefine directories so that they no longer fall within the scope of the Conduct Regulations. They currently do so because of the way the definition of 'employment agency' contained in Section 13 of the Employment Agencies Act 1973 is framed. We have carefully considered whether amendments to this definition would be the best way forward. However, we have concluded

that this would not be a satisfactory solution because of the alternative loopholes it could provide for unscrupulous agencies. In particular, changes to the definition would potentially provide scope for any agency to amend their operations so that they operated more as directories and therefore bypass a ban on upfront fees.

14 There was some support for our proposed Option 1b, a ban on charging upfront fees unless someone was suitably qualified. However, a number of responses, supplemented by discussions with stakeholders, highlighted how complex, costly and bureaucratic this would be to administer and difficulties with enforcement. Based on this feedback we have decided not to pursue this option.

15 In dealing with this issue we want to strike a balance between tackling the main areas of abuse of upfront fees charged to work-seekers, with those of the legitimate directories for which upfront fees are an integral part of their business model. We have therefore concluded that the best approach will be to ban upfront fees for photographic and fashion models, background artists, extras and walk-ons, but continue to allow them in respect of the recruitment of actors, production staff and other entertainers. We will provide guidance to explain what activities are covered by the definitions for background artists, extras and walk-ons to provide clarity for agencies and work-seekers as to the occupations in respect of which they will be prohibited from charging a fee.

16 In addition we will tighten the Conduct Regulations in respect of the following occupations listed in Schedule 3 of the Regulations: actor, musician, singer, dancer, or other performer. In these circumstances the following conditions will apply:

- i) The statutory cooling off period in respect of any upfront fee will be extended from 7 to 30 days.
- ii) Employment agencies will be required to notify all new clients of this in writing, making clear that they have a right to cancel in that period.
- iii) The cooling off period will start only when the agency accepts a worker on to their books or agrees to find them work and they have issued or offered the work-seeker a written contract or terms.
- iv) Provision will be introduced for the worker to see and approve a draft of the information to be provided in the publication prior to payment of a fee.
- v) Provision for a refund will be introduced if no publication is produced or circulated within a set timeframe of 60 days.

17 For the remaining occupations listed in Schedule 3, (related to behind the scenes work such as production staff, cameramen etc) there is no evidence that work-seekers are at risk of abuse. For these occupations the cooling off period will therefore remain at the current seven days.

18 We will also introduce a 30 day cooling off period in respect of photographic and motion picture services provided by the employment agency or person connected with the employment agency. This is to address evidence that some unscrupulous agencies charge vulnerable work-seekers high fees for poor quality or unnecessary portfolios or audition tapes.

19 We consider this package will be effective in tackling the abuse in the entertainment and modelling sector. Agencies will no longer have an incentive to take lots of workers onto their books, making a profit from the upfront fees, with little or no effort made to find them work. The evidence from the consultation was that this was a practice particularly prevalent amongst those representing models, extras and walk-ons. Where upfront fees still apply the strengthened measures will ensure that work-seekers are aware of their rights to withdraw from any contract and will have sufficient notice to do this. They will also provide protection in cases where a publication is not produced in a timely fashion or not produced at all. Under the new arrangements, legitimate directories will also be able to continue operating.

20 We will combine these measures with targeted awareness activities, working with key stakeholders. This will include guidance and information to prospective entrants to the entertainment and modelling industry aimed at ensuring they are fully aware of their rights and are alert to the practices of some unscrupulous agencies in this sector.

21 The consultation has highlighted the fact that the Employment Agency Standards Inspectorate (EAS) also receives complaints around the behaviour of some modelling agencies which fall out of scope of the Conduct Regulations and are therefore out of the EAS jurisdiction. Sometimes there may be a breach of Distance Selling Regulations, the Consumer Protection from Unfair Trading Regulations or other consumer legislation. Where these situations arise the EAS will work closely with local trading standards officers and other enforcement bodies to share information and direct complainants to the appropriate authorities.

b) Temporary workers employed through umbrella companies

22 The consultation sought evidence on whether workers supplied to a hirer through an umbrella company are at risk of being exploited. Under Regulation 32 these workers can choose to opt out of the Conduct Regulations. In recent years there has been some evidence that employment businesses supplying low-skilled temporary workers may require more vulnerable work-seekers to operate through an umbrella to enable them to opt out and evade the Regulations. Once a worker has opted out they lose the protections afforded to them by the Conduct Regulations and may be vulnerable for example to non-payment of wages.

23 The consultation has not provided convincing evidence of vulnerable workers suffering detriment in this respect. Furthermore, the evidence provided by the professional bodies that represent contractors and umbrella company providers is that any changes would have an adverse impact on legitimate contractors who actively choose those arrangements, potentially raising their costs and administrative burdens. Consequently, we do not think

that there is sufficient justification for taking further action at this stage. We propose instead to further consider the guidance that is provided for work-seekers and employment agencies around the opt-out with a view to ensuring that those who may be vulnerable are aware of their rights. We will also continue to gather evidence and will investigate the possibility of commissioning research to get a more detailed understanding of this issue, in particular the scale and nature of low paid workers that are employed via umbrella companies. This evidence will determine any future action that we take.

Clarifying lines of responsibility and reducing regulatory burdens

c) Suitability checks for permanent recruitment

24 The consultation proposed removing the current requirement for employment agencies who introduce workers for permanent employment, to undertake suitability checks. The requirements regarding employment businesses placing workers on temporary assignments would continue to apply. Most respondents stated that the reduction in burdens from this would not be substantial in practice. Indeed some agencies told us that they would continue to carry out the checks even if we were to remove the requirement to do so. However, it is clear that removing the requirement would remove some unnecessary regulatory burden and also enable on-line agencies to continue operating their current business models and be compliant with the Conduct Regulations.

25 The original proposal set out in the consultation was for these checks to be maintained only when the worker was to be employed with those under 18 in their own home. However, having analysed the consultation responses and taking into account likely changes to the some of the legislation covering nursing and care work, we consider that this approach could potentially still leave gaps where those working with the vulnerable may not be covered by any checking regime. We will therefore proceed broadly as outlined in the consultation and remove the requirement for employment agencies to carry out checks for most work-seekers. But in respect of those working with the vulnerable we will expand the definition of those circumstances that would still require checks to be made. In particular, checks will still be required when the worker is to be employed working with or caring for all those that are vulnerable by reason of age or infirmity and require care and attention. In these cases the employment agency will have to confirm the work-seeker is suitable to work for the hirer by carrying out certain checks. These checks will cover the identity of the work-seeker, their experience, training, qualifications and any authorisation required to fill the vacancy.

26 We also sought views on intentions to repeal Regulation 20 (5) and (6), which require employment agencies to inform hirers if they receive information that the worker is unsuitable within a three month period from the date of introduction. We have concluded however, that the position should remain unchanged. The evidence from the consultation is that it is not a burdensome obligation and does offer some additional protection to hirers.

d) Requirements to agree terms with work-seeker and hirers

27 Under Conduct Regulations 14, 16 and 17 all employment agencies (i.e. those introducing workers for permanent employment) have a requirement to agree terms in respect of permanent candidates, prior to submitting candidates to clients. We sought views on whether these Regulations were necessary or could be simplified.

28 Some respondents suggested that these requirements help to provide clarity, but the overall view was that Regulation 14 serves no real purpose as the hirer is the company who will have the ultimate contractual relationship with the worker. Regulation 17 was considered by respondents as superfluous as agencies and hirers would have their own contractual arrangements. Regulation 16 was deemed necessary to protect those that are charged upfront fees.

29 We will therefore remove the requirement that employment agencies should obtain agreement to terms with work-seekers in Regulation 14 and agreement with hirers in Regulation 17. This means that these Regulations will only apply to employment businesses. Regulation 16 will be amended to clarify that it applies to the limited situations where an upfront fee can be charged for work-finding services.

e) Requirements when placing advertisements

30 Under Regulation 27 every advertisement must include the agency or employment business's name and whether it is acting as an employment agency or employment business as well as reflecting the full nature of the position being advertised. We sought views on how to amend this regulation, either by simplifying it or removing any unnecessary burdens.

31 The general consensus amongst those that responded to this question was that it would be more appropriate to require that an advertisement should state the type of vacancy that is being advertised. The majority favoured 'temporary' or 'permanent' being used as the current terms of employment agency and employment business mean little to most people. Some of the organisations representing contractors suggest use of a third option, for example contractor, freelancer or interim contract in order to distinguish the self-employed.

32 We will therefore amend the Regulations so that advertisements for jobs no longer need to include a statement as to whether the organisations is acting as an employment agency or employment business but rather that they must state whether a position is 'temporary' or 'permanent'. We consider that these terms are far more likely to be understood by workers applying for these positions.

Post Graduate Medical Deaneries

33 Medical Deaneries are responsible for the recruitment and training programme of junior doctors and junior dentists to NHS employers. Deaneries were exempt from the Employment Agencies Act 1973 but following NHS reorganisation in 2006 were inadvertently brought within scope. This was an

oversight and we proposed that deaneries should be made exempt from employment agencies legislation, reverting to their previous position.

34 The respondents on this issue mainly comprised a number of Deaneries who were in support of the proposal. The British Medical Association (BMA) expressed concerns about the loss of protection for junior doctors and the potential detriment to them if Deaneries were exempted. The British Dental Association supported the BMA's position. In light of these responses we have met with both the BMA and Department of Health to discuss this issue in greater detail.

35 We intend to proceed as outlined in the consultation and will restore Post Graduate Medical Deaneries to their previous position as bodies exempt from employment agency legislation. This is based on evidence that the potential consequences could be to seriously hinder the recruitment and training arrangements for junior doctors with a subsequent impact on both costs and staffing for the NHS.

36 However, in order to address the concerns raised a discussion forum has been established between the BMA and the Department of Health. This will aim to put together a code of conduct that will govern the recruitment and training arrangements for junior doctors. Our view is that this is a more appropriate approach to this unique area than the Conduct Regulations.

Timing

37 The Government plans to lay the amended Regulations in this Parliament. With the exception of changes to the status of Medical Deaneries, all of the changes outlined in this response will come into force on 1 October 2010. Changes to the status of Medical Deaneries will come into force in early 2010.

Other issues

Online agencies and job boards

38 A number of responses from online agencies and job boards either disputed their classification as agencies or wanted clarification on their standing. They considered the Conduct Regulations as unsuited to policing the online sector as it could be difficult for some of the online business models to be compliant.

39 It remains our position that if an organisation is offering work-finding services as set out in the Employment Agencies Act 1973 then they are in scope of the Conduct Regulations and must therefore comply with them. However we are aware of the concerns raised by online agencies and that the nature of these online services can make it difficult to be compliant with the Regulations, which is why we included this as an issue in the consultation document. We believe that the range of simplification measures we are proposing around Regulations 14, 17, 19 and 22 should enable online agencies to continue operating without being in breach of the Regulations, and will assist an important UK sector to maintain its position as a global

innovator. Furthermore, due the fast evolving nature of the online world and the continuing development of new online recruitment services, we will continue to monitor the situation and maintain a dialogue with the industry to look at further issues that may arise.

Licensing

40 A number of responses to the consultation recommended that a licensing regime should be reintroduced for recruitment companies operating in the UK. Their view was that the lack of a licensing regime was an invitation to rogue operators and made enforcement more difficult, particularly in the entertainment sector.

41 Our view is that although licensing is justified in certain circumstances, it is not appropriate for the recruitment sector as a whole, on the grounds that it would impose an unnecessary regulatory burden on all labour providers. Our approach instead will be to prioritise effective enforcement of existing employment law protections. In addition to the new measures outlined in this document we have already taken a number of steps to improve enforcement including:

- Establishment of a single helpline - the Pay and Work Rights Helpline – to protect vulnerable workers. Workers can now report abuses of these rights to one contact point that can address multiple complaints making it easier for workers to report abuse, and for government to respond.
- A sustained campaign, targeted at vulnerable workers to raise awareness of basic employment rights and the new route for reporting abuses.
- Improved joint working between the different bodies responsible for enforcing workplace rights building on the success of the single enforcement helpline.

A Fair Employment Enforcement Board chaired by the Employment Relations Minister which meets regularly, bringing together the enforcement bodies and external stakeholders such as the TUC and CBI to drive forward improvements.

Additional measures

Legislative Reform Order

42 In addition, we are currently consulting on proposals for a Legislative Reform Order to tackle the legal information sharing barriers which, in some instances, impede the extent to which employment rights enforcement bodies can share relevant information with each other. The order will, for example, permit officers responsible for enforcing employment agency regulation, the National Minimum Wage, and the Agricultural Minimum Wage to share relevant information with officers responsible for enforcing the Working Time Regulations, including officers from the Health and Safety Executive, local authorities and a number of specialist sectoral authorities. They will also permit the transfer of information in the opposite direction.

43 The changes will assist the enforcement of workplace rights, thereby enhancing the protection of vulnerable workers and helping to level the playing field for the vast majority of reputable employers. By being able to share information, the enforcement bodies will be able to carry out their work more efficiently by targeting inspections on businesses most likely to be non-compliant and reducing the extent to which information has to be collected more than once.

Enforcement powers

44 In March this year, the Employment Agency Standards (EAS) underwent a Hampton Implementation Review to measure its approach and performance against the Hampton Report principles. The Review Team made a number of recommendations which EAS will look to implement.

45 The Review, which was published last week, recognises that EAS 'has a clear sense of purpose understood by staff and stakeholders' and that the 'direction of travel is very positive'. The reviewers commented, however, that EAS's 'sanctioning options are limited'.

46 In response to these recommendations, we agree that EAS should work toward gaining the new powers available under the Regulatory Enforcement and Sanctions Act 2008, which would broaden its range of sanctions for non-compliant agencies. These powers could include monetary penalties, restoration notices and stop notices in addition to EAS's existing powers to issue warning letters, prosecute agencies or prohibit directors from being involved in the running of an employment agency or employment business.

47 EAS are currently talking to the Better Regulation Executive to assess what it needs to do to gain these powers. These powers would give EAS a set of sanctions that would allow it to tackle non-compliance in ways that are flexible and proportionate to the offence.

Guidance

48 Some respondents raised the need for clearer guidance and the EAS is committed to helping the industry understand its obligations more easily. EAS will work with the industry and its trade bodies to draw up revised guidance that is business friendly, accessible and gives practical advice to employment agencies and employment businesses. We believe that the increased clarity will aid compliance in the sector. The revised guidance will be published on the Business Link website (www.businesslink.gov.uk/employingpeople) and will be in place by March 2010.

European Agency Workers Directive

49 As the consultation document explained, our proposals on these issues are entirely separate from questions relating to the implementation of the Agency Workers Directive. The implementation of the Directive could however require some adjustment to the Conduct Regulations (Regulation 10) in relation to 'transfer fees' and 'extended periods of hire' to comply fully with the Directive. These matters were covered in a separate policy consultation on

the implementation of the Agency Workers Directive (which closed at the end of July) which asked whether the existing legislative provisions were consistent with the requirements of the Directive or whether adjustments of current legislation were needed. On 15 October the Government responded to the initial consultation and published the draft regulations demonstrating how we intend to implement all aspects of the Directive, including proposed amendments to Regulation 10. That consultation closes on 11 December 2009 and can be found at: www.berr.gov.uk/consultations/page53060.html.

50 We have concluded that the right course on this issue is to amend the Conduct Regulations to introduce an express 'reasonableness' test. We therefore propose to amend regulation 10 of the Conduct of Employment Businesses and Employment Agencies to limit any "transfer fee" an employment business can charge to a reasonable one and to require any extended period of hire, as an alternative to paying the transfer fee, to be reasonable.

The consultation process

51 The consultation was conducted between 19 March and 11 June 2009. The consultation asked 23 questions covering the range of issues to be addressed. The consultation questions are attached at Annex A.

52 The consultation launch was supported by a press notice and a publicity campaign which included a slot on GMTV. Copies of the consultation documents were sent to key stakeholders, placed onto the BIS website and hardcopies made available via the BIS Publications Orderline. Over the period of the consultation 625 people registered on the survey website either to receive further details or to respond to the consultation. Over 85 per cent of responses to the consultation were made via the online facility.

53 To supplement the consultation process a consultation meeting specifically to discuss the issue of upfront fees was held in London on 6 May 2009 (list of attendees at Annex C). A list of organisations that BIS officials also met on an individual basis is also available at Annex C. The points raised in the consultation meeting, and in other meetings with individual stakeholders, have been taken into account in the consultation response.

54 A total of 349 responses to the consultation were received. A list of those respondents who did not request confidentiality can be found at Annex B.

55 Information about the size of business was sought on the consultation response form to enable any particular impacts depending on the size of the business to be assessed. The breakdown of business respondents by business size is shown in the Executive Summary.

Annex A: Consultation Questions

- Q1 How effective do you consider the cooling off period has been at preventing the unscrupulous practice of rogue employment agencies or individuals?
- Q2 If the regime were to be tightened which of the 2 approaches outlined above would be your preference? Can you explain why?
- Q3 With respect to inclusion of information about the work-seeker in a publication, would the banning of taking upfront fees, damage legitimate firms/individuals working in the entertainment/modelling industry? If so, can you explain how?
- Q4 If there were a ban on upfront fees, what revisions would such legitimate businesses need to make to their current business models to take this into account? What would be a reasonable period of notice for them to make those revisions?
- Q5 How effective do you think Option 1b would be at allowing legitimate directories in the entertainment industry to continue operating, whilst preventing the unscrupulous practice of rogue employment agencies or individuals?
- Q6 Which do you think are the most effective or appropriate criteria for determining whether or not an organisation should be exempted from a ban on charging upfront fees? Can you explain why?
- Q7 Do you have any alternative solutions on how the abuse of upfront fees could be stopped?
- Q8 Would you like to see a ban on the taking of an upfront fee for photographic and show reel services provided by an employment agency or a person connected with the agency?
- Q9 Do you have any evidence of low skilled or vulnerable workers being disadvantaged by the opt-out?
- Q10 Is there still a practical need for Regulation 32 and does it do what it was originally intended to do?
- Q11 What adjustments would need to be made if workers were no longer allowed to opt-out of the Regulations? What burdens would this add to businesses and contractors?
- Q12 What would be the impact on employment businesses if they were unable to only take work-seekers prepared to go through an incorporated company?
- Q13 Do you think certain Regulations should be exempted from the opt-out and if so which Regulations should they be?

Q14 Is option v), restricting the opt-out to high skilled contractors, a practical option? If so, how?

Q15 Would the removal of this requirement be of benefit. If so, can you explain how?

Q16 If you represent an employment agency what level of savings would the removal of this requirement bring to your employment agency?

Q17 Should there be any exceptions or differences with respect to employment agencies supplying workers for work e.g. those supplied to work with vulnerable individuals?

Q18 What checks do you consider your employment agency will undertake and what would be the best way of communicating that information to the hirer?

Q19 a) Do you think Regulation 20 (5) and (6) is necessary?

b) How often does your employment agency inform hirers about information that has come to light during the 3 month period set out in Regulation 20 (5) and (6)?

c) Do you see any benefit in shortening or removing the 3 month requirement completely?

Q20 Do you agree that the other statutory provisions that currently exist will ensure protection?

Q21 We would welcome your views on whether we could simplify or remove the need to agree these terms in relation to permanent recruitment, whilst ensuring there was adequate information provision and protection for work-seekers, and if so how.

Q22 We would welcome your views on how we could simplify adverts or remove the requirement to state whether the services being advertised are those of an employment agency or employment business, whilst ensuring the nature of the position was clear to the work-seeker.

Q23 Can you identify the level of annual saving that the removal of this requirement would bring to your employment agency or employment business? Please try and quantify in terms of potential annual savings.

Annex B: List of Respondents

Adam Blackie
Alan Brent
Alison Lewin
Allison Bolton
Allon Sylvain
Andy Kinnear
Ben Ashlin
Bernard Peek
Beth Porter
Bobbie Roe
Brian Day
Cally Lawrence
Charles Moore
Claire Stewart
Clive Hurst
Colin Tulley
Daniel Kerry
David Cox
Derek Green
Eleanor Dearle
Elizabeth Jane Holmes
Ellie Fitzhenry
Eryl Maynard
Estie McLaurin
Eve Spaughton
Geoff Hayday
Gill Stoker
Gillian Royale
Graham McGrath
Heidi Ashton
Helen Grady
Helen Kirkpatrick
Jacqueline Redgewell
Jeni Hatton
Jeremy Friday
Jill Lamede
John Guerrasio
John Perkins
Jonathan Cann
Jules Kingham
Karen Granat
Karensa Louis
Kate Bancroft
Kate Chisholm
Kathryn Worthington
Kerry Hodgkin
Kya Garwood
Leilani Holmes
Libby Wattis
Lisa Ralph
Liz Jadav
Lynden Bowen
Mark Smith
Mary Wells
Michael Reid
Mike Barnett
Mike Swain
Milo Bell
Miss Joanne Bamford
Mohammed Patwa
Nadia Silva
Nick Kneller
Patricia Anne Robson
Penelope Peters
Peter Sundby
Rachel Cassidy
Rashid Karapiet
Rebecca Johnson
Richard Moody
Richard Phillips
Robert Kane
Sally Crane
Sally Treble
Samantha Hopkins
Samantha Ritchie
Scott Hoatson
Seb Craig
Sheelagh Grime
Sherry Stone
Shirley Anne Field
Taiwo Ajai
Tony Sands
Tricia Anderson
William Banyard
Yvonne Pinnington

Abell Morliss Ltd
 Access Artiste Management Ltd
 Adecco
 Appleton – Delancy
 APSCO
 Association of Model Agents
 Association of Recruitment
 Companies'
 BDA
 BECTU
 Berkeley Executive
 BMA
 Business People Matters Ltd
 Casting Call Pro
 Casting Directors' Guild
 CastWeb
 CBI
 Citizens Theatre
 Connect Group Consulting
 Co-operative Personal Management
 Association
 CPBio Consulting Ltd
 Dance 8
 Data Publishers Association
 Debigno Ltd
 EKA and EuroKids modelling
 agencies
 Equity
 Extraspecials
 GMB
 Greenville Management Limited
 Hourglass Interim Ltd
 Hunter-Cowton Limited
 Ian Michael Gibson Limited
 Institute of Interim Management
 IPPM Ltd
 Ist Option
 John dean & Associates
 Kopf - JÄger Ltd
 Lennox Hamilton Ltd
 Lindeth Ltd
 Ling Chinese Entertainments
 Link.R3 Limited
 Locum QP Ltd
 Mabacus Limited
 Magnox North
 Mark Harris Consulting Ltd.
 Mersey Deanery
 Michael Gray Interm Limited
 Monster.co.uk
 Morgan Law
 Morganite Consulting Ltd
 Nautilus International
 Noel Gee Associates Ltd.
 North East Chamber of Commerce
 North West Deanery
 NUT
 OCC Computer Personnel
 Odgers Interim
 O'Neill Associates Limited
 Online recruitment Marketing Council
 (ORMC)
 Orpheus Management Services Ltd
 PCS
 Performers Alliance Parliamentary
 Group
 Practicus Ltd
 Proactive Personnel
 ProductionBase
 Professional Contractors Group
 Randstad UK Holding Limited &
 Randstad UK
 Rapier Management Consultants Ltd
 REC
 Redway Consultants Ltd
 Remedy UK
 Resource Solutions Group Plc
 Ribskill Limited
 RJS Consulting Services Ltd
 Russell Hyde Ltd
 Showoffs Agency
 SJD Group Ltd
 Skillsedge Limited
 SPA
 Spotlight
 The Agents' Association (GB)
 Thompsons Solicitors
 Totaljobs
 TUC
 UCATT
 Unite
 United Kingdom Homecare
 Association
 USDAW
 Willpower Brands Ltd

Annex C: Organisations BIS officials met with

List of attendees at stakeholder meeting on 6 May 2009.

The Agents' Association (GB)
Casting Call Pro
CastWeb
Castnet
The Stage
Spotlight
Equity

List of organisations that BIS officials met in further meetings.

APSCO
Association of Model Agents
BECTU
BMA
Casting Call Pro
CBI
Data Publishers Association
Equity
ProductionBase
Professional Contractors Group
REC
SPA
Spotlight
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Annex D: Impact Assessment

Summary: Intervention & Options		
Department /Agency: Department for Business Innovation and Skills (BIS)	Title: Impact Assessment of Employment Agencies Conduct Regulations	
Stage: Consultation	Version: Final	Date: September 2009
Related Publications: Government Response		

Available to view or download at:

www.bis.gov.uk

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

- Duplication of checks in the recruitment of permanent staff via employment agencies
- Improve the protection for vulnerable workers employed via employment agencies and employment businesses
- Correcting an anomaly relating to Medical Deaneries
- Reduce the admin burdens for the recruitment industry

What are the policy objectives and the intended effects?

The policy objectives consulted on were:

- Reducing duplication and improve clarity around suitability checks around permanent recruitment
- Maintaining fair treatment for workers
- Reclassify Medical Deaneries
- Reduce the admin burden costs on employers so that they are proportionate to risks

What policy options have been considered? Please justify any preferred option. Following consultation the Government is proposing to:

- Remove the requirement for employment agencies to undertake suitability checks for permanent recruitment which will avoid duplication and reduce admin burdens
- Ban the charging of upfront fees for some entertainers and tighten the Regulations in this area to further protect work-seekers
- Correct an anomaly by exempting Postgraduate Medical Deaneries from the employment agency legislation and remove risk of potentially unnecessary costs for the NHS
- Make further miscellaneous changes to the Regulations (see main IA for detail)

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? The policy will be reviewed after 3 years of implementation. However, the Employment Agency Standards Inspectorate (EAS) monitor and review the Regulations and complaints received on these issues on an ongoing basis.

Ministerial Sign-off For Implementation Stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:



Date: October 2009

Summary: Analysis & Evidence

Policy Option:	Description: Package of changes to Conduct Regulations to improve protection for vulnerable workers and reduce admin burdens in the industry
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups' There will be costs for agencies and hirers resulting from the ban on up-front fees for some entertainers (£600k), as well as the from tightening of the Regulations (£41k).
	One-off (Transition) Yrs	
	£ 0m	
	Average Annual Cost (excluding one-off)	
	£ 0.64m	Total Cost (PV) £ 5.5m

Other **key non-monetised costs** by 'main affected groups' None.

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups' Work-seekers will benefit from removal of upfront fees (£600k) and by up to £600k/year from tightening of the Regulations. Agencies will benefit by £835k/year mainly due to the removal of suitability checks for permanent recruitment.
	One-off Yrs	
	£ 0m	
	Average Annual Benefit (excluding one-off)	
	£ 1.9-2m	Total Benefit (PV) £ 16.6 – 17.5m

Other **key non-monetised benefits** by 'main affected groups' None.

Key Assumptions/Sensitivities/Risks Unit costs for admin burdens are used from PwC (2005) and BIS' ORC survey in 2008. Estimates of numbers of agencies and agency workers are from BIS research. In the absence of reliable data assumptions have been made about numbers of entertainers seeking work through agencies.

Price Base Year 2009	Time Period Years 10	Net Benefit Range (NPV) £ 11.1 – 12m	NET BENEFIT (NPV Best estimate) £ 11.1- 12m
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What is the geographic coverage of the policy/option?	UK			
On what date will the policy be implemented?	Oct 2010			
Which organisation(s) will enforce the policy?	EAS			
What is the total annual cost of enforcement for these organisations?	£ NK			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	No			
What is the value of the proposed offsetting measure per year?	£ N/A			
What is the value of changes in greenhouse gas emissions?	£ N/A			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro NK	Small NK	Medium NK	Large NK
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)	
Increase of	£ 0k	Decrease of	£ 766k
		Net Impact	£ -766k

A. Strategic Overview

The Government carried out a consultation between 19 March and 11 June 2009 on the Employment Agency Standards Conduct Regulations 2003 to improve the protection afforded to vulnerable workers, reduce the administrative (admin) burdens faced by industry and take Medical Deaneries out of the scope of the Employment Agencies Act 1973 (also known as “the Act”).

Definitions of employment agencies and employment businesses

There is often confusion about the differences between employment agencies and employment businesses. To clarify:

- **Employment agencies** introduce workers to hirers for permanent employment. The worker subsequently becomes the employee of the hirer and has no further contractual relationship with the agency. Work-seekers looking for permanent employment would, therefore, use the services of an employment agency.
- **Employment businesses** introduce workers to hirers for temporary work only. The employment business (also known as temp agencies) will place a worker with a hirer to work. The worker’s contractual relationship is with the employment business and it is the employment business that is responsible for paying the worker and managing annual leave etc. These workers are often known as agency workers, hence the confusion over the terms employment agency and employment business.
- **Recruitment businesses that do both.** Some recruitment businesses offer both temporary and permanent vacancies. A work-seeker’s relationship with this type of recruiter depends on the nature of the vacancy they are applying for.

For example if a work-seeker is looking for a job on an online jobs board⁽¹⁾ and applies for a permanent vacancy, the recruiter must act as an employment agency in their dealings with the work-seeker. If the work-seeker was using the same recruiter and applied for a temporary job then that recruiter’s relationship with the work-seeker is as an employment business and it must act accordingly.

⁽¹⁾ An online jobs board is an internet site where job vacancies are posted (vacancies could be permanent or temporary).

B. Issue

B.1 Groups Affected

The groups that would be affected by the changes are; all employment agencies and employment businesses, work-seekers and hirers that use their services.

Specifically changes to:

- Regulation 26 would impact modelling and entertainment agencies, certain trade press in this sector and ‘vulnerable work-seekers’.

- Regulation 32 would impact on anyone who is employed through an incorporated company.
- Regulations 14, 16, 17, 19, 20, 22, and 27 would have an impact on employment agencies and employment businesses and to a lesser extent work-seekers and hirers.
- The Medical Deaneries exemption would have an impact on Deaneries.

The full regulations are available from
<http://www.opsi.gov.uk/si/si2003/20033319.htm>

B.2 Consultation

Within Government

The Department for Business Innovation and Skills (BIS) has developed these proposals in consultation with the following Government departments: Department for Children, Schools and Families (DCSF), Health and Safety Executive (HSE), Department for Work and Pensions (DWP), Home Office (HO) and Department of Health (DH).

Public Consultation

A public consultation was carried out between 19 March and 11 June 2009. The number of responses received as well as the profile of organisations that responded are reported in the accompanying Government Response. The nature of the responses as well as the results of further discussions with stakeholders are discussed under each broad option below.

B.3 Rationale for Government intervention

1. Checking Suitability for Permanent Recruitment

In the absence of Government intervention, there is a risk that agencies are duplicating the work, with respect to suitability checks for permanent recruitment that the employer has to do by law. As a result, inefficiencies arise as both the agency and the employer carry out the checks, when it is possible that only one of the parties would have to do this.

2. Fees Payable by Entertainers and Models

In the absence of Government intervention, there is a risk that some vulnerable agency workers will continue to be mistreated as a result of certain work practices carried out by a minority of businesses and agencies who act in ways the vast majority of agencies would never consider, and who, in doing so, cut corners at the expense of workers and gain an unfair commercial advantage at the expense of reputable agencies.

3. Position of Postgraduate Medical Deaneries

Medical Deaneries are responsible for the recruitment and training programme of junior doctors and junior dentists to NHS employers. In 2006 the Deaneries, following NHS re-organisation, moved to become part of strategic health authorities. This moved them within scope of the Employment Agencies Act 1973 and therefore

subject to employment agency legislation. In the absence of Government intervention, Deaneries would continue to fall under the employment agencies legislation, when it should be exempt from the Act as Deaneries are not employment agencies. In the absence of intervention there are potentially significant cost implications for the Department of Health in trying to comply with the Conduct Regulations.

4. Miscellaneous Regulation Changes

In the absence of Government intervention, there is a risk that some vulnerable agency workers will continue to be mistreated as a result of certain work practices carried out by a minority of businesses and agencies who act in ways the vast majority of agencies would never consider, and who, in doing so, cut corners at the expense of workers and gain an unfair commercial advantage at the expense of reputable agencies. In addition, there is the risk that some of these regulations pose admin burdens on agencies.

C. Objectives

C1. Objectives

The March 2009 consultation covered 4 broad policy objectives, as follows:

- **Policy Objective 1: Checking Suitability for Permanent Recruitment:** to assess the extent to which the Government can reduce regulatory burdens, clarify lines of responsibility, address overlap and eliminate duplication in respect of suitability checks for workers introduced by employment agencies for permanent employment.
- **Policy Objective 2: Fees payable by entertainers and models:** to examine the fees entertainment and modelling agencies charge with a view to proposing a ban on the taking of upfront fees altogether. Evidence suggests that despite the introduction of the 7-day cooling off period, some agencies continue to abuse it.
- **Policy Objective 3: Position of Postgraduate Medical Deaneries:** to correct an anomaly where, as a result of NHS re-organisation, Deaneries now fall within the scope of the Employment Agencies Act and are subject to employment agency legislation. Deaneries were previously exempt and it was never the intention that they be covered by the Act.
- **Policy Objective 4: Miscellaneous Regulation Changes:** to assess the extent to which the Government can reduce regulatory burdens in areas such as the requirements to agree terms with work-seekers and hirers in respect of permanent recruitment; and the requirements when placing advertisements. In addition this policy objective aims to look at the protection for temporary workers being employed by umbrella companies.

C.2 Background

Regulation	Relevant Information Obligations (IO)	
26: Charging of upfront fees by entertainment and modelling agencies.	IO 28345 (used as proxy)	Giving notice to the work-seeker of arrangements to pay fares or offer free travel for the work-seeker's journey to the place of work including details of free travel or payment of fares, including any conditions on which they are offered.
32: Amendments to regulations that allow temporary workers employed through umbrella companies to opt-out of the Conduct Regulations.	IO 28393	Providing notice to an agency/employment business of an agreement that you (as a company work-seeker) or persons that you supply would not be covered by these regulations (concerning conduct of employment agencies and businesses).

Vulnerable workers

Reducing Admin Burdens for the Industry

Regulation	Relevant Information Obligations (IO)	
19, 20, 22: Reduce the duty for employment agencies, involved in recruitment of permanent workers, to carry out suitability checks when placing work-seekers with an employer.	IO 28512	Obtaining confirmation of required information prior to introducing or supplying a work-seeker to a hirer.
	IO 28315	Informing the hirer of a work-seeker that he/she may be unsuitable for the position in which they have been employed.
14, 16, 17: Remove obligations to agree terms with workers in case of permanent recruitment.	IO 28282	Sending a copy of the agreed terms to the hirer (unless hirer already has a copy) before first providing services.
27: Simplify the requirements for employment agencies and employment businesses when advertising vacancies.	IO 2029	Ensuring that every advert you issue mentions the details stated in the regulation.

Exempting Medical Deaneries

- Exempt Postgraduate Medical Deaneries from the Employment Agencies Act, who following re-organisation of the NHS are now within scope of, and therefore subject to employment agency legislation. This is an anomaly. Deaneries were previously exempt and it was never the intention that they be within the scope of the Act.

D. Options

The discussion of options below first of all summarises the options consulted on under each policy objective, but then focuses on the Government's preferred options following consultation. A more detailed discussion of all of the original options is given in the annex to this IA.

Policy Objective 1: Checking Suitability for Permanent Recruitment

Table D.1 Summary of Options for Policy Objective 1

Option	Summary
1a	to make no changes (do nothing).
1b	amend Regulations 19 (a) & (b) and Regulation 22 in order to remove the requirement for employment agencies (who introduce workers for permanent employment) to undertake suitability checks.
1c	to do the same as Option 1b, plus consult on whether Regulation 20 (5) & (6), (which require an agency to inform the hirer if they receive or obtain information that the worker is unsuitable) is necessary and/or whether there is any benefit in shortening the current 3 month period (after which the obligation lapses).

Responses to the consultation generally supported the removal of the requirement for employment agencies to undertake suitability checks (option 1b), although the feedback suggested that the reduction in burdens for business would be relatively small. However, in the case of online agencies removal of the requirement would enable them to continue to operate their current business models and be compliant with the Conduct Regulations. The Government intends therefore to proceed with this option.

The consultation also highlighted the need to retain safeguards for those working with people under the age of 18 or other vulnerable groups¹. In these cases checks would still be required.

Furthermore the proposal to shorten the current 3 month period (option 1c) is not being pursued. The consultation showed this to not be a burdensome obligation and it offers additional protection to hirers.

¹ those that by reason of age or infirmity and require care and attention

Policy Objective 2: Fees payable by entertainers and models

Table D.2 Summary of Options for Policy Objective 2

Option	Summary
2a	to make no changes (do nothing).
2b	introduce a total ban on upfront fees for individuals seeking work in the entertainment and modelling sector.
2c	as option 2b but with an exemption that allows directories to charge clients upfront fees in the entertainment sector. to tighten existing regulations (combined with targeted awareness activities) by amending to include:
	- Requirement to notify clients in writing about 7 day cooling off period & right to cancel;
2d	- Ban on taking of credit card impressions/post dated cheques; - Provision for refund if no publication produced or circulated; and - Explicit reference to assessment fees not being permissible.

Although there are legitimate directories operating within this sector for which upfront fees are an integral part of their business model, there is also evidence of continued abuse. The aim of the consultation was therefore to try and strike a balance.

Responses to the consultation and further discussion with stakeholders have made it clear that an outright ban on upfront fees (option 2b) would be unworkable, as it would stop a legitimate route to work for many in the acting and entertainment sector. Equally, tightening the Regulations alone is unlikely to eliminate the abuse of up-front fees (option 2d), although it may reduce the problem to some extent.

The Government's preferred option is therefore to:

- Introduce a ban on upfront fees in those areas where there is most evidence of abuse (the model, walk-on and extras sectors)
- Retain their use for actors, production staff and other entertainers
- Tighten the Regulations to address concerns by extending the cooling off period to those areas where abuse is more prevalent (actors and performers)
- Develop a targeted awareness campaign

For the proposals on upfront fees, the key here will be clear and appropriate definitions and the Government will work with stakeholders to develop these.

Tightening of the Regulations will specifically involve the extension of the cooling-off period from 7 to 30 days for actors, singers, dancers and other performers. This may have some cost implications, but we feel that the benefits of tackling abuse outweigh the costs.

Policy Objective 3: Position of Postgraduate Medical Deaneries

Table D.3 Summary of Options for Policy Objective 3

Option	Summary
3a	to make no changes (do nothing).
3b	to exempt Postgraduate Medical Deaneries from the employment agency legislation.

Following the consultation and responses from the key stakeholders and subsequent meetings the Government intends to go ahead with its preferred option (3b) of exempting medical deaneries from the Conduct Regulations.

Policy Objective 4: Miscellaneous Regulation Changes

4.1: REGULATIONS 14, 16, 17: Obligations to agree terms with workers in case of permanent recruitment

Table D.4 Summary of Options for Policy Objective 4.1

Option	Summary
4.1a	to make no changes (do nothing).
4.1b	to removing the requirement to agree terms with work-seekers in respect of permanent candidates. Prior to submitting candidates to clients, terms must be agreed. This option proposes to remove these so that terms will instead be agreed when the work-seeker gets a job.

The Government proposes to proceed with option 4.1b as Regulation 14 served no real purpose as the hirer is the company who will have the ultimate contractual relationship with the worker. Regulation 17 was seen as superfluous as agencies and hirers would have their own contractual arrangements. Regulation 16 was deemed necessary to protect those that are charged upfront fees.

4.2: REGULATION 27: Advertisements

Table D.5 Summary of Options for Policy Objective 4.2

Option	Summary
4.2a	to make no changes (do nothing).
4.2b	to simplify advertising requirements by removing the obligation to specify whether the hirer is acting as an <i>employment agency</i> or <i>employment business</i> .

Responses to the consultation favoured ‘temporary’ or ‘permanent’ being used instead of the current terms.

The Government now proposes to replace the current terms that need to be stated, that is whether it is an ‘employment agency’ or ‘employment business’, with terms that are based on the type of vacancy. Therefore the terms ‘temporary’ and ‘permanent’ will now be used as these are far more likely to be understood by workers applying for these positions.

4.3: REGULATION 32: Application of the Regulations to work-seekers which are incorporated

Table D.6 Summary of Options for Policy Objective 4.3

Option	Summary
4.3a	to make no changes (do nothing).
4.3b	to repeal Regulation 32 in its entirety.
4.3c	to issue better guidance for workers so they do not agree to sign an opt-out without understanding what they are agreeing to.
4.3d	to make it an offence to make the provision of work-finding services only available to those who are incorporated or are prepared to work through a composite company.
4.3e	to make opt-out not apply to certain key Regulations such as; Regulation 6 (restriction on detrimental action relating to work-seekers working elsewhere) and Regulation 10 (restriction on charges to hirers).

The consultation sought views and evidence on temporary workers employed through umbrella companies, specifically with regard to the risks faced by vulnerable workers who may unwittingly opt out of the protections afforded to them by the Conduct Regulations².

Subject to the evidence obtained, the Government was considering a number of possible measures to address the issue. These are summarised in table D6 above.

The consultation did not result in any significant evidence that vulnerable workers are suffering detriment in this area and so the Government does not propose, at this time, to take further action. However, the Government will continue to gather evidence and may conduct research to investigate the issue further. The Government will also improve the guidance for work-seekers, hirers and employment businesses around this area.

E. Costs and Benefits

As with the discussion of options above, this section focuses on the costs and benefits associated with the preferred Government options under each policy

² The opt-out was intended to provide flexibility for highly skilled professional personnel in the IT and finance sectors that wanted to operate as limited companies due to tax advantages.

objective. The cost-benefit analysis for the now discarded options is reproduced in the annex to this Impact Assessment.

For the majority of the policy options, the savings or costs arise due to a change in admin burdens. To estimate these increases or reductions in this IA, we have used the results from the interim report of Opinion Research Corporation (ORC) International's Employment Law Administrative Burden Measurement Research 2008³. Where ORC have not estimated the cost for an Information Obligation (IO), we have used data from the PricewaterhouseCoopers (PwC) 2005 admin burdens exercise.

Policy Objective 1: Checking Suitability for Permanent Recruitment

General Assumptions and Data

- The Recruitment and Employment Confederation's (REC) Annual Industry Turnover and Key Volumes Survey 2007/8 found that around 726,863 workers were placed into permanent employment via an agency.
- BIS's Survey of Recruitment Agencies (SORA) 2007 showed that there are around 1.5m temporary agency workers in the UK, and REC's census found that there are around 1.1m. We use a mid-figure between the two surveys of around 1.3m⁴.
- SORA also estimates that there are around 16,000 agencies. In order to calculate the reduction or increase in admin burdens, we have to use this figure.

Option 1b – Remove suitability checks for employment agencies that introduce workers for permanent employment

Costs

Removing suitability checks for employment agencies would not incur a cost for the agency or the employer, as, by law, employers have to carry out their own suitability checks when they hire permanent workers from agencies.

Benefits

As agencies would no longer be required to carry out suitability checks, they should benefit from a decrease in admin burdens.

However, as indicated in section D above checks will remain for those working with people under 18 and other vulnerable groups. The evidence from discussions with key stakeholders including trade associations in this field suggests the offsetting impact here will be quite small. It is estimated that only around 10,000 workers would be affected (although this may increase over the coming years), as most recruitment in this sector is through employment businesses.

³ The final report, 'Employment Law Admin Burdens Survey 2008', was published in December 2008. <http://www.berr.gov.uk/files/file49199.pdf>

⁴ See 'Agency Working in the UK: A Review of the Evidence', Employment Relations Research Series No.93, BIS, October 2008, <http://www.berr.gov.uk/files/file48720.pdf>

To estimate the reduction in admin burdens, we use PwC's 2005 admin burdens exercise estimates. The IO that corresponds to this regulation is IO 28512. The cost of this IO to an agency is around £120 (2005 prices). Apportioning this cost over the number of permanent workers⁵ - minus those for whom checks will remain – would result in aggregate savings (from a decrease in admin burdens) of around £683k per year (£752k per year in 2009 prices⁶).

Policy Objective 2: Fees payable by entertainers and models

General Assumptions and Data

- Anecdotal evidence suggests that the upfront fee may be around £200.
- Anecdotal evidence suggests that around 10,000 people per year join these agencies.⁷
- Anecdotal evidence suggests that around 60% of the 10,000 people join these agencies to seek work in the entertainment sector.

(i) Ban on up-front fees for model, walk-on and extras sectors

Costs

The banning of upfront fees would impose a cost to modelling and entertainment agencies as they would still have to publish a portfolio for their worker, but would not be able to recover the cost of the publication. It is not possible to accurately estimate the costs of this policy in the absence of better data. However, using anecdotal evidence, it is estimated the aggregate cost of doing so across the sector would be around £2m per year (2009 prices).

However as the charging of upfront fees will only be banned for the model, walk-on and extras sectors the costs of this option would be smaller. Anecdotal evidence suggests that around 40% of the 10,000 people that join these agencies do so in order to seek work that is not in the entertainment sector. Furthermore of those who do seek work in the entertainment sector, we assume that half do so for modelling, walk-on and extras work. Therefore, the aggregate cost to agencies of this option would be around £600k per year (2009 prices).

Benefits

The banning of upfront fees in the model, walk-on and extras sectors would result in a saving for those seeking work in these areas. It is not possible to accurately estimate the benefits of this policy in the absence of better data, but, using anecdotal

⁵ (Cost of IO / Number of workers per agency) * Number of Workers Placed into Permanent Recruitment. Where:

Number of Workers per Agency = (Permanent Workers + Temporary Workers) / Number of Agencies.

⁶ Using Her Majesty's Treasury's (HMT) Gross Domestic Product (GDP) deflator figures.

⁷ These figures were used in the 2007 IA on Protecting Vulnerable Agency Workers. We are assuming that these numbers have not changed by a great amount.

evidence, we estimate the aggregate benefit of this option would be around £600k per year (2009 prices).

(ii) Tightening the Regulations and Raising Awareness

Costs

Under this option, the agency would have to inform all new clients seeking work as actors, singers, dancers and other performers of the 30-day cooling off period in writing. PwC or ORC does not have a specific IO for this regulation. However, if we use PwC's IO 28345⁸ as a proxy, the increase in admin burdens would be around £12 per individual. Therefore the aggregate cost would be around £37k per year (£41k per year 2009 prices)⁹.

Given that under this proposal the agency would have to refund the fee should no publication materialise after a certain period, poses a possible cost for the agency and a cost to the individual. Costs for agencies would increase as it would have to refund the money that it owes the work-seeker. In addition, there would be costs to agencies of chasing up individuals for payment as they cannot take a post-dated cheque or credit/debit card impression. This option would also pose costs to the work seeker (individual), as they would have to chase up the agency to get their money back, if the agency fails to notify them of the refund. In the absence of better data it is difficult to estimate these costs.

Benefits

It is not possible to accurately estimate the benefits from this policy in the absence of better data. However, if we assume that for around 25% to 30% of the 10,000 people who join these agencies no publication materialises, then the benefit from a refund would amount to around £500k to £600k per year (2009 prices).

Policy Objective 3: Position of Postgraduate Medical Deaneries

Option 3b – Change position of Postgraduate Medical Deaneries

Costs

Under this option Postgraduate Medical Deaneries will not fall under the Employment Agency Act. We estimate that there would be no costs involved as Deaneries were not considered as employment agencies prior to the 2006 NHS re-organisation and changing them back to their pre-2006 status would have no impact.

Benefits

The benefit of this option would be that Deaneries would no longer be classified as employment agencies. In addition, there are no risks for Deaneries of having to comply with employment agency regulations.

⁸ Giving notice to the work-seeker of arrangements to pay fares or offer free travel for the work-seeker's journey to the place of work including details of free travel or payment of fares, including any conditions on which they are offered.

⁹ Calculated as 10,000 x 60% (entertainers) x 50% (excluding those for whom up front fees are banned) x £12.29 (2005 prices)

By maintaining the Deaneries in scope there is potential for disruption to the recruitment and training arrangements for junior doctors with a subsequent impact on both costs and staffing for the NHS. These costs have not been quantified here.

Policy Objective 4: Miscellaneous Regulation Changes

General Assumptions and Data

- Data from Annual Survey of Hours and Earnings (ASHE) 2008 shows that the average pay of a labour recruiter is around £11 per hour. Assuming a 21% mark-up to include non-wage costs, total hourly pay would be around £13 per hour.
- REC's survey found that around 726,863 workers were placed into permanent employment via an agency in 2007/08.
- SORA showed that there are around 1.5m temporary agency workers in the UK, and REC's census found that there are around 1.1m. We use a mid figure between the two surveys of around 1.3m.
- SORA also estimates that there are around 16,000 agencies. In order to calculate the reduction or increase in admin burdens, we have to use this figure.

REGULATION 14, 16, 17: Requirements to agree terms with work-seekers and hirers

Costs

Removing the requirement to agree terms with work-seekers in respect of permanent candidates would not pose any costs.

Benefits

To estimate the reduction in admin burdens for this option, we use ORC's interim results for IO 28282. The cost of this IO to an agency is around £14 (2009 prices). Apportioning this cost over the number of permanent workers, the aggregate savings (from a decrease in admin burdens) would be around £83k per year (2009 prices).

REGULATION 27: Requirements when placing advertisements

The Government has decided to replace the terms 'employment agency' and 'employment business' with 'temporary' and 'permanent' respectively. This is designed to improve clarity by using terms that are more likely to be understood by workers when applying for these positions.

The options costed in the consultation stage impact assessment were based on the removal of any requirement to state these terms. Therefore the cost savings identified then will now not occur.

REGULATION 32: Temporary workers employed through umbrella organisations

As stated in section D above, in the absence of evidence that Regulation 32 poses a specific risk to vulnerable workers, the Government is not proposing any changes at this time. There are currently no cost-benefit implications at this stage.

F. Risks

Policy Objective 1: Checking Suitability for Permanent Recruitment

No risks could be identified with respect to Options 1b as the suitability checks ought to be carried out by the employer, as they are required to do so by law.

Policy Objective 2: Fees payable by entertainers and models

With Option 2b, there is the risk that certain modelling, extras and walk-on agencies might not be able to recoup the cost of financing the publication of a portfolio purely from commission charged on work found.

There is the risk that with a 30 day cooling off period you may get more consumers using these services and then withdrawing from them prior to the 30 day period in order to get a 'free trial'.

Policy Objective 3: Position of Postgraduate Medical Deaneries

There are no risks involved under Option 3b.

Policy Objective 4: Miscellaneous Regulation Changes

REGULATION 14, 16, 17

Under Option 4.1b there is the risk that the work-seeker would be unaware of the terms that it has with the agency.

REGULATION 27

Under Option 4.3b there is the risk that the work-seeker would not be aware if the hirer is an employment agency or employment business.

REGULATION 32

The risk of the options proposed for Regulation 32 is that the umbrella company that an employment business uses could see a fall in demand and some could potentially shut down. As the majority of umbrella companies use umbrella companies for reducing payroll costs this risk is small.

G. Enforcement

The Employment Agency Standards Inspectorate (EAS) would enforce the policy changes for the options proposed in Policy Objectives 1, 2 and 4. The exemption of Postgraduate Medical Deaneries from the Employment Agency Act will result in enforcement by the Department of Health.

H. Summary and Recommendations

The table below outlines the costs and benefits of the changes resulting from the Government's preferred options.

Table H.1 Costs and Benefits by Policy Objective		
Option	Cost	Benefit
Objective 1: Checking Suitability for Permanent Recruitment	None	£752k/year for agencies
Objective 2: Fees payable by entertainers and models	£641k/year for agencies and hirers	£1.1m-£1.2m for work-seekers
<i>Ban on up-front fees for model, walk-on and extras sectors</i>	£600k/year for agencies and hirers	£600k/year for work-seekers
<i>Tightening Regulations and Raising Awareness</i>	£41k/year for agencies, plus <ul style="list-style-type: none"> • Cost to agency of chasing up payment (not quantified) • Cost to agency of providing a refund (not quantified) • Cost to individual of chasing refund (not quantified) 	£500k - £600k/year for work-seeker
Objective 3: Position of Postgraduate Medical Deaneries	None	Corrects the anomaly that placed Deaneries under the Employment Agencies Act (not quantified) Removes risk for Deaneries of having to comply with employment agency regulations. (not quantified)
Objective 4: Miscellaneous Regulation Changes	None	£83k/year for agencies
<i>Requirements to agree terms with work-seekers and hirers</i>	None	£83k/year for agencies
<i>Requirements when placing advertisements</i>	None	None
<i>Temporary workers employed through umbrella organisations</i>	None	None
Total Quantifiable Costs & Benefits <i>(sum of Objectives 1-4)</i>	£641k	£1.9m - £2.0m
<i>of which: Work-seekers</i>	none	£1.1m - £1.2m
<i>of which: Agencies and/or hirers</i>	£641k	£835k

Source: BIS, ASHE, REC, PwC

I. Implementation

The Government plans to implement these changes in October 2010. The exemption on Deaneries may occur before this date.

J. Monitoring and Evaluation

The effectiveness of the new regime would be monitored by the Employment Agency Inspectorate , who monitor and review the Regulations and complaints received on these issues on an ongoing basis.

Specific Impact Tests: Checklist

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	No	Yes
Small Firms Impact Test	No	Yes
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	No
Rural Proofing	No	No

Annexes

A1. Specific Impact Assessments

Competition Assessment

Policy Objective 1: Checking Suitability for Permanent Recruitment

No option would directly limit the range of suppliers as new firms can enter the market to supply individuals. Firms will enter the market if it is economically viable for them to do so. No option would indirectly limit the number of suppliers. This is because the proposals are not likely to significantly raise the costs of new entrants relative to existing ones. No option would limit the ability of suppliers to compete or reduce suppliers' incentives to compete vigorously. Thus we do not consider that the Regulation changes would cause a significant detriment to competition.

Policy Objective 2: Fees payable by entertainers and models

No option would directly limit the range of suppliers as new firms can enter the market to supply individuals. Firms will enter the market if it is economically viable for them to do so.

No option would indirectly limit the number of suppliers. This is because the proposals are not likely to significantly raise the costs of new entrants relative to existing ones. In addition, costs are not expected to rise significantly for some existing firms relative to others, as all firms would have to comply with the options being proposed.

Under option 2b and 2c there is a possibility that it could limit the ability of suppliers to compete. This is because it is likely that the removal of the upfront fee or giving written notice will be more burdensome to some existing firms than others, as some agencies would not be able to recoup this cost by other means.

No option would reduce the suppliers' incentive to compete vigorously as there will be no exemption from competition law.

Policy Objective 3: Position of Postgraduate Medical Deaneries

No Impact.

Policy Objective 4: Miscellaneous Regulation Changes

No option would directly limit the range of suppliers as new firms can enter the market to supply the individuals. Firms will enter the market if it is economically viable for them to do so. No option would indirectly limit the number of suppliers. This is because the proposals are not likely to significantly raise the costs of new entrants relative to existing ones. No option would limit the ability of suppliers to compete or reduce suppliers' incentives to compete vigorously. Thus we do not consider that the Regulation changes would cause a significant detriment to competition.

Small Firms Impact Test

Policy Objective 1: Checking Suitability for Permanent Recruitment

SORA showed that there are around 16,000 agencies across the UK and less than 1% of these employ more than 200 people¹⁰. Therefore given that the majority of agencies are SMEs, the proposals are likely to have a greater impact on smaller firms. However, the impact would not be judged to be disproportionate as all agencies would have to comply with the measures stated above.

Policy Objective 2: Fees payable by entertainers and models

The measures discussed above are likely to have a greater impact on smaller firms as these dominate the agency sector. However, the impact would not be judged to be disproportionate as all agencies would have to comply with the proposals in the options put forward.

Policy Objective 3: Position of Postgraduate Medical Deaneries

No Impact.

Policy Objective 4: Miscellaneous Regulation Changes

The measures discussed above are likely to have a greater impact on smaller firms as these dominate the agency sector. However, the impact would not be judged to be disproportionate as all agencies would have to comply with the proposals in the options put forward.

Equality Impact Assessment

Policy Objective 1: Checking Suitability for Permanent Recruitment

The proposed changes to the Regulation should apply equally to all groups. Without a better set of data it is not possible to accurately breakdown the number of workers that were put into permanent employment via an agency by sex, race or disability. However, none of the options would disproportionately affect any group over another as they would still be covered by the sex, race and disability discrimination acts.

Policy Objective 2: Fees payable by entertainers and models

The proposed changes to the Regulation should apply equally to all groups. Without a better set of data it is not possible to accurately breakdown the number of workers that are employed through a modelling or entertainment agency. However, none of the options would disproportionately affect any group over another as they would still be covered by the sex, race and disability discrimination act.

Policy Objective 3: Position of Postgraduate Medical Deaneries

No Impact.

¹⁰ See Chart 1 of Agency Working in the UK: A Review of the Evidence, Employment Relations Research Series No.93, BIS, October 2008, <http://www.berr.gov.uk/files/file48720.pdf>

Policy Objective 4: Miscellaneous Regulation Changes

The proposed changes to the Regulation should apply equally to all groups. None of the options would disproportionately affect any group over another as they would still be covered by the sex, race and disability discrimination acts. The table below shows a breakdown of all temporary agency workers in the UK by sex and race.

Table A1. Temporary Agency Workers in the UK

	(%)
Women	58
Ethnic Group	31
Of which:	
Asian	4
Black Caribbean	3
Black African	5
Other, including Eastern European	19

Source: REC

A2. Options presented in the consultation stage impact assessment

This annex reproduces the complete description of the options presented in the 2009 consultation.

Discussion of Options

Policy Objective 1: Checking Suitability for Permanent Recruitment

Option 1a is to make no changes (do nothing).

Option 1b Amend Regulations 19 (a) & (b) and Regulation 22 in order to remove the requirement for employment agencies (who introduce workers for permanent employment) to undertake suitability checks.

Regulations 19 (a) & (b): Remove the need for employment agencies to carry out checks on the identity of the work-seeker or any checks that the work-seeker has the experience, training, qualifications and any authorisation which the hirer considers are necessary, or which are required by law or by any professional body, to work in the position which the hirer seeks to fill.

Regulation 22: When supplying a work-seeker that will be involved with vulnerable workers then no need to provide:

1. Copies of the qualifications and authorisations,
2. Two references, and
3. Take other steps to ensure that the work-seeker is not unsuitable.

Option 1c is to do the same as Option 1b, plus consult on whether Regulation 20 (5) & (6), (which require an agency to inform the hirer if they receive or obtain information that the worker is unsuitable) is necessary and/or whether there is any benefit in shortening the current 3 month period (after which the obligation lapses).

Policy Objective 2: Fees payable by entertainers and models

Option 2a is to make no changes (do nothing).

Option 2b involves a total ban on upfront fees for individuals seeking work in the entertainment and modelling sector.

Option 2c is the same as option 2b but with an exemption that allows directories to charge clients upfront fees in the entertainment sector.

Option 2d proposes to tighten existing regulations (combined with targeted awareness activities) by amending to include:

- Requirement to notify clients in writing about 7 day cooling off period & right to cancel;
- Ban on taking of credit card impressions/post-dated cheques;
- Provision for refund if no publication produced or circulated; and
- Explicit reference to assessment fees not being permissible.

Policy Objective 3: Position of Postgraduate Medical Deaneries

Option 3a is to make no changes (do nothing).

Option 3b proposes to exempt Postgraduate Medical Deaneries from the employment agency legislation.

Policy Objective 4: Miscellaneous Regulation Changes

REGULATIONS 14, 16, 17: Obligations to agree terms with workers in case of permanent recruitment

Option 4.1a is to make no changes (do nothing).

Option 4.1b involves removing the requirement to agree terms with work-seekers in respect of permanent candidates. Prior to submitting candidates to clients, terms must be agreed. This option proposes to remove these so that terms will instead be agreed when the work-seeker gets a job.

REGULATION 27: Advertisements

Option 4.2a is to make no changes (do nothing).

Option 4.2b is to simplify advertising requirements by removing the obligation to specify whether the hirer is acting as an employment agency or employment business.

REGULATION 32: Application of the Regulations to work-seekers which are incorporated

Option 4.3a is to make no changes (do nothing).

Option 4.3b involves repealing Regulation 32 in its entirety.

Option 4.3c is to issue better guidance for workers so they do not agree to sign an opt-out without understanding what they are agreeing to.

Option 4.3d is to make it an offence to make the provision of work-finding services only available to those who are incorporated or are prepared to work through a composite company.

Option 4.3e is to make opt-out not apply to certain key Regulations such as; Regulation 6 (restriction on detrimental action relating to work-seekers working elsewhere) and Regulation 10 (restriction on charges to hirers).

Costs and Benefits

For the majority of the policy options, the savings or costs arise due to a change in admin burdens. To estimate these increases or reductions in this IA, we shall be using Opinion Research Corporation (ORC) International's Employment Law Administrative Burden Measurement Research 2008 interim results¹¹. Where ORC have not estimated the cost for an IO, we will use PricewaterhouseCoopers (PwC) 2005 admin burdens exercise.

Policy Objective 1: Checking Suitability for Permanent Recruitment

General Assumptions and Data

- PwC's 2005 admin burdens exercise estimates that there are around 15,000 agencies. In order to calculate the reduction or increase in admin burdens, we have to use this figure.
- The Recruitment and Employment Confederation's (REC) Annual Industry Turnover and Key Volumes Survey 2007/8 found that around 726,863 workers were placed into permanent employment via an agency.
- BIS's Survey of Recruitment Agencies (SORA) 2007 showed that there are around 1.5m temporary agency workers in the UK, and REC's survey found that there are around 1.2m. We use a mid-figure between the 2 surveys of around 1.35m.

¹¹ The Final IA will be published containing the definitive estimates.

Option 1b – Remove suitability checks for employment agencies who introduce workers for permanent employment

Costs

Removing suitability checks for employment agencies would not incur a cost for the agency or the employer. This is because, by law, employers have to carry out their own suitability checks when they hire permanent workers from agencies.

Benefits

As agencies would no longer be required to carry out suitability checks, they should benefit from a decrease in admin burdens.

To estimate the reduction in admin burdens, we use PwC's 2005 admin burdens exercise estimates. The IO that corresponds to this regulation is IO 28512. The cost of this IO to an agency is around £120 (2005 prices). Apportioning this cost over the number of permanent workers¹², the aggregate savings (from a decrease in admin burdens) would be around £631k per year (£681k per year for 2008 prices¹³).

Option 1c – Same as Option 1b, plus reducing the 3 month period in which the agency has to inform the hirer if new information arises about the worker

Costs

As stated in Option 1b, there would be no costs involved from removing the requirement for the agency to carry out suitability checks on workers being placed into permanent employment. In addition, reducing the 3 month period shouldn't increase costs as if the employer does its own checks (which it has to by law), then it should be informed of any changes in circumstances from whomever they contacted to get the information about the worker.

Benefits

This option would have the same benefits as option 1b.

In addition, the PwC admin burdens exercise estimates that the cost of Regulation 20(5) & (6) (IO 28315) is around £44 per work-seeker (2005 prices). Anecdotal evidence suggests that a small number of hirers receive new information about a worker. Therefore, if under the assumption that for around 1% of the 727k permanent workers, the agency gets information that they are unsuitable, and for illustration purposes we further assume that around half of these cases would not arise due to a shorter period, the aggregate saving (from a decrease in admin burdens) would be around £161k per year (£173k per year for 2008 prices).

¹² (Cost of IO / Number of workers per agency) * Number of Workers Placed into Permanent Recruitment. Where:

Number of Workers per Agency = (Permanent Workers + Temporary Workers) / Number of Agencies.

¹³ Using Her Majesty's Treasury's (HMT) Gross Domestic Product (GDP) deflator figures.

Therefore the aggregate benefit (which includes the benefits from Option 1b) of this option would be around £791k per year (£854k per year for 2008 prices).

Policy Objective 2: Fees payable by entertainers and models

General Assumptions and Data

- Anecdotal evidence suggests that the upfront fee may be around £200.
- Anecdotal evidence suggests that around 10,000 people per year join these agencies.¹⁴
- Anecdotal evidence suggests that around 60% of the 10,000 people join these agencies to seek work in the entertainment sector.

Option 2b – Total ban on upfront fees

Costs

The banning of upfront fees would impose a cost to modelling and entertainment agencies as they would still have to publish a portfolio for their worker, but would not be able to recover the cost of the publication. It is not possible to accurately estimate the costs of this policy in the absence of better data. However, using anecdotal evidence, the aggregate cost of this option would be around £2m per year (2008 prices).

Benefits

The banning of upfront fees would result in a saving for models and entertainers seeking work. Therefore, the aggregate benefit would be around £2m per year (2008 prices).

Option 2c – Same as option 2b but with an exemption that allows directories to charge clients upfront fees in the entertainment sector

Costs

The costs of this option would be similar to those in option 2b, but smaller as directories in the entertainment sector would be able to charge upfront fees. It is not possible to accurately estimate the costs of this policy in the absence of better data. However, anecdotal evidence suggests that around 40% of the 10,000 people that join these agencies do so in order to seek work that is not in the entertainment sector. Therefore, the aggregate cost to agencies of this option would be around £800k per year (2008 prices).

Benefits

The benefits of this option would be similar to those in option 2b, but smaller as directories in the entertainment sector would be able to charge upfront fees. It is not possible to accurately estimate the benefits of this policy in the absence of better

¹⁴ These figures were used in the 2007 IA on Protecting Vulnerable Agency Workers. We are assuming that these numbers have not changed by a great amount.

data. However, using anecdotal evidence, the aggregate benefit of this option would be around £800k per year (2008 prices).

Option 2d – Invest in raising awareness of 7 day cooling off period, providing a refund should no publication materialise & ban the taking of post-dated cheques or credit/debit card impressions

Costs

Under this option, the agency would have to inform all new clients of the 7 day cooling off period in writing. PwC or ORC does not have a specific IO for this regulation. However, if we use PwC's IO 28345¹⁵ as a proxy, the increase in admin burdens would be around £12 per individual. Therefore the aggregate cost would be around £123k per year (£133k per year 2008 prices).

Given that under this proposal the agency would have to refund the fee should no publication materialise after a certain period, poses a possible cost for the agency and a cost to the individual. Costs for agencies would increase as it would have to refund the money that it owes the work-seeker. In addition, there would be costs to agencies of chasing up individuals for payment as they cannot take a post-dated cheque or credit/debit card impression. This option would also pose costs to the work seeker (individual), as they would have to chase up the agency to get their money back, if the agency fails to notify them of the refund. In the absence of better data it is difficult to estimate these costs.

Benefits

It is not possible to accurately estimate the benefits from this policy in the absence of better data. However, if we assume that for around 25% to 30% of the 10,000 people who join these agencies no publication materialises, then the benefit from a refund would amount to around £375k to £450k per year (2008 prices).

Policy Objective 3: Position of Postgraduate Medical Deaneries

Option 3b – Change position of Postgraduate Medical Deaneries

Costs

Under this option Postgraduate Medical Deaneries will not fall under the Employment Agency Act. We estimate that there would be no costs involved as Deaneries were not considered as employment agencies prior to the 2006 NHS re-organisation and changing them back to their pre-2006 status would have no impact.

Benefits

The benefit of this option would be that Deaneries would no longer be classified as employment agencies. In addition, there are no risks for Deaneries of having to comply with employment agency regulations.

¹⁵ Giving notice to the work-seeker of arrangements to pay fares or offer free travel for the work-seeker's journey to the place of work including details of free travel or payment of fares, including any conditions on which they are offered.

Policy Objective 4: Miscellaneous Regulation Changes

General Assumptions and Data

- Data from ASHE 2008 shows that the average pay of a labour recruiter is around £11 per hour. Assuming a 21% mark-up to include non-wage costs, total hourly pay would be around £13 per hour.
- PwC's 2005 admin burdens exercise estimates that there are around 15,000 agencies. In order to calculate the reduction or increase in admin burdens, we have to use this figure.
- REC's survey found that around 726,863 workers were placed into permanent employment via an agency in 2007/08.
- SORA showed that there are around 1.5m temporary agency workers in the UK, and REC's survey found that there are around 1.2m. We use a mid-figure between the 2 surveys of around 1.35m.

REGULATION 14, 16, 17

Option 4.1b – Remove the requirement to agree terms with work-seekers in respect of permanent candidates. Terms will instead be agreed when the work-seeker gets a job

Costs

Removing the requirement to agree terms with work-seekers in respect of permanent candidates would not pose any costs.

Benefits

To estimate the reduction in admin burdens for this option, we use ORC's interim results for IO 28282. The cost of this IO to an agency is around £14 (2008 prices). Apportioning this cost over the number of permanent workers, the aggregate savings (from a decrease in admin burdens) would be around £75k per year (2008 prices).

REGULATION 27

Option 4.2b – Remove the obligation to specify whether the hirer is acting as an employment agency or employment business

Costs

The cost of this option would be that the work seeker will not know if the hirer is an employment agency or an employment business. However, the impact would be small as anecdotal evidence suggests that most individuals do not know the difference between an employment agency and employment business.

Benefits

Employment agency and employment business would save some money from not printing its status as an agency or business. The PwC admin burdens exercise estimates that the cost of Regulation 27 (IO 2029) is around £12 per agency. However this IO also includes that the advert must state the full name of the

agency/employment business. We assume that by taking out the requirement to state whether the hirer is acting as an agency or employment business, costs could fall by 50%. Consequently, each agency should save around £6 per year. Therefore, the aggregate reduction in admin burdens would be around £92k per year (£100k per year 2008 prices).

REGULATION 32

Option 4.3b Repeal Regulation 32 in its entirety

Costs

There would be no costs involved in repealing Regulation 32.

Benefits

The PwC admin burdens exercise estimates that the cost of Regulation 32 (IO 28393) is around £32 per number of businesses receiving work seekers from employment agencies. In 2005, there were around 540k businesses that received workers in this manner, if we assume that this figure hasn't changed by a great amount then the savings from repealing Regulation 32 would amount to around £12.9m per year in 2005 prices (£13.9m per year in 2008 prices).

In addition the benefit would be that it would not leave workers vulnerable to non-payment, and the employer would be able to transfer the worker from being on a temporary contract to a permanent contract. Without better data, it is difficult to estimate these benefits.

Option 4.3c - Issue better guidance for workers

Costs

The PwC admin burdens exercise does not have a specific IO for this regulation and we were unable to find a relevant proxy. However, this option would result in an increase of admin burdens for agencies as they would have to issue better guidance for work seekers. If we assume that of the 1.35m agency workers, around 40% (540k) are employed through an umbrella company and it takes 30 minutes to 1 hour for the agency staff to explain the opt-out, then the cost to the agency would be around £6.50 to £13 per worker. The aggregate cost would be around £3.5m to £7m per year (2008 prices).

Benefits

In the absence of better data it is difficult to estimate the benefit of this option. However, the benefit would be that the worker would be better informed about what the opt-out involves. Therefore it would not leave the worker vulnerable to non-payment.

Option 4.3d - Make it an offence to make the provision of work-finding services only available to those who are incorporated or are prepared to work through a composite company

Costs

There would be no costs involved in making it an offence to make the provision of work-finding services only available to those who are incorporated or are prepared to work through a composite company.

Benefits

In the absence of better data it is difficult to estimate the benefit of this option. However, the benefit would be that it would not leave workers vulnerable to non-payment, as they would not be forced to opt-out of certain regulations.

Option 4.3e - Make opt-out not apply to certain key Regulations, such as Regulation 6 (restriction on detrimental action relating to work-seekers working elsewhere) and Regulation 10 (restriction on charges to hirers)

Costs

There are no costs involved with this option.

Benefits

The benefits of having these restrictions in place are that it would protect workers from non-payment, as they would not be forced to opt-out of certain regulations and give the hirer the option to make the worker a permanent employee.

