

 <b>Regulatory Policy Committee</b>	<b>Opinion</b>	
<b>Impact Assessment (IA)</b>	Prohibiting employment agencies and employment businesses from recruiting exclusively in other EEA countries	
<b>Lead Department/Agency</b>	Department for Business, Innovation & Skills	
<b>Stage</b>	Final	
<b>IA number</b>	BIS0401	
<b>Origin</b>	Domestic	
<b>Expected date of implementation</b>	SNR 9	
<b>Date submitted to RPC</b>	29 September 2014	
<b>RPC Opinion date and reference</b>	17th October 2014	RPC14-BIS-2180(2)
<b>Departmental Assessment</b>		
<b>One-in, Two-out status</b>	<b>IN</b>	
<b>Estimate of the Equivalent Annual Net Cost to Business (EANCB)</b>	<b>£0.01 million</b>	
<b>RPC Overall Assessment</b>	<b>GREEN</b>	
<p><b>RPC comments</b></p> <p>The IA is fit for purpose. Following the RPC’s red-rated consultation stage opinion of 6 August 2014, the IA now provides a discussion of why the Department has rejected other options, including an alternative to regulation. The Department now also provides an explanation of why there are unlikely to be any new on-going costs as a result of additional record-keeping requirements.</p> <p>The RPC is able to validate the estimated net cost to business of £0.01 million each year.</p>		
<p><b>Background (extracts from IA)</b></p> <p><b>What is the problem under consideration? Why is government intervention necessary?</b></p> <p><i>“The recruitment sector is regulated by the Employment Agencies Act 1973 and the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (both as amended). The current recruitment sector legislation does not regulate where job vacancies are advertised. This means that some employment agencies and employment businesses may be advertising vacancies in other EEA countries without giving workers in Britain the opportunity to apply. Although this practice may be considered a breach of the Equality Act 2010, government intervention is needed to correct the enforcement mechanism, and therefore improve equity in the labour market by ensuring that recruitment firms advertise jobs located in Britain in English to individuals resident in Britain.”</i></p>		

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

- “1. To improve fairness by creating a level playing field for work-seekers by ensuring that employment agencies and employment businesses advertise all job vacancies based in Great Britain in English and to British residents.
2. To expand the range of job opportunities open to people in Great Britain; expand the range of people that businesses can choose from and ensure that vacancies are accessible to English speakers.
3. To effectively enforce the equality of access to advertisements for jobs in GB (Northern Ireland has its own version of the conduct regulations).”

### **Comments on the robustness of the OITO assessment**

The IA says that this is a regulatory proposal that would impose a net cost on business (an ‘IN’) with an estimated equivalent annual net cost to business of £0.01 million. This is consistent with the current Better Regulation Framework Manual (paragraph 1.9.10) and, based on the evidence presented, provides a reasonable assessment of the likely impacts.

### **Comments on the robustness of the Small & Micro Business Assessment (SaMBA)**

The proposals increase the scope of regulation on business. A SaMBA is, therefore, required.

The SaMBA is sufficient. The IA provides evidence on the proportion of affected businesses likely to be small or micro-businesses (90%). The Department has assessed the proposal as having a “*minimal impact on business overall [and] it is therefore unlikely to cause any disproportionate costs to small and micro businesses so as to justify mitigation*”. Respondents to the consultation did not raise any concerns with the analysis. On this basis, the Department’s assessment that the proposal is unlikely to introduce disproportionate costs on small and micro-businesses appears to be reasonable.

### **Quality of the analysis and evidence presented in the IA**

The proposal will ban employment agencies from advertising exclusively overseas, UK-based jobs. It will also ban advertising of jobs exclusively in languages other than English unless there are clear grounds to justify it (for example, where such an approach can be justified under the Equality Act 2010).

The RPC previously issued a red-rated opinion on the consultation stage IA. The Department has, in this final stage IA, responded to the concerns raised previously by the RPC.

The Department considered how the Equality and Human Rights Commission (EHRC), the regulator with responsibility for enforcing some aspects of the Equality Act 2010, could use its current powers for enforcement. It concluded that the

processes available to the EHRC would result in higher costs of enforcement than the preferred option.

The Department explains that, "...the EHRC has no power of disclosure unless it launches a formal investigation." It states for the EHRC to carry out a formal investigation, it must provide, "...written details of why an action may be unlawful and terms of reference; providing an opportunity for the named organisation to comment on the terms of reference and publish the terms of reference."

In contrast, the Department considered that "EAS [Employment Agencies Standards Inspectorate] inspectors have comprehensive inspection powers under section 9 of the Employment Agencies Act 1973, including the power to inspect any records or documents kept in relation to the Act or the conduct regulations. This means that EAS inspectors can act quickly in response to a complaint and can request information from an agency using their section 9 powers."

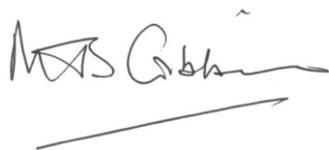
The Department also considered if changes to EHRC processes could be made through amendments to the Equality Act 2006. This was rejected as the Department felt it would be disproportionate due to the wider implications it would have for how the EHRC discharges its duties under the Equality Act 2010.

While the Department has now explained why enforcement by EHRC was discounted due to higher costs, the Committee remains unconvinced that there is compelling evidence to support this assertion.

The IA provides a robust assessment of the likely costs to business of the proposal, estimated at £84,400 in the first year, based on the familiarisation costs for all 18,000 or so employment agencies and businesses. The clarity of the IA could, however, be improved in a number of ways:

- Explain why the costs to the Exchequer of Employment Agencies Standards Inspectorate enforcement (paragraph 45) would be negligible - for example; through illustrating how they would be incorporated into the baseline activity.
- Summarise the evidence [(paragraphs 35 and 38)] used for the assumptions supporting the familiarisation costs. While the estimates appear robust, the IA would be clearer if it included additional detail in relation to the supporting evidence.

**Signed**



**Michael Gibbons, Chairman**