

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

First Delegated Legislation Committee

DRAFT CONDUCT OF EMPLOYMENT AGENCIES AND EMPLOYMENT BUSINESSES (AMENDMENT) REGULATIONS 2016

Wednesday 23 March 2016

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Sunday 27 March 2016

STRICT ADHERENCE TO THIS ARRANGEMENT WILL GREATLY
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IN GENERAL COMMITTEES

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The Committee consisted of the following Members:

Chair: PHIL WILSON

- | | |
|--|---|
| † Boles, Nick (<i>Minister for Skills</i>) | † Mahmood, Shabana (<i>Birmingham, Ladywood</i>) |
| † Brennan, Kevin (<i>Cardiff West</i>) (Lab) | (Lab) |
| † Creasy, Stella (<i>Walthamstow</i>) (Lab/Co-op) | † Morden, Jessica (<i>Newport East</i>) (Lab) |
| † Foster, Kevin (<i>Torbay</i>) (Con) | † Morris, Anne Marie (<i>Newton Abbot</i>) (Con) |
| † Gray, Neil (<i>Airdrie and Shotts</i>) (SNP) | † Scully, Paul (<i>Sutton and Cheam</i>) (Con) |
| † Howell, John (<i>Henley</i>) (Con) | † Throup, Maggie (<i>Erewash</i>) (Con) |
| † Hunt, Tristram (<i>Stoke-on-Trent Central</i>) (Lab) | † Zahawi, Nadhim (<i>Stratford-on-Avon</i>) (Con) |
| † James, Margot (<i>Stourbridge</i>) (Con) | |
| † Jones, Mr David (<i>Clwyd West</i>) (Con) | Katy Stout, <i>Committee Clerk</i> |
| † Kinnock, Stephen (<i>Aberavon</i>) (Lab) | |
| † Mackintosh, David (<i>Northampton South</i>) (Con) | † attended the Committee |

First Delegated Legislation Committee

Wednesday 23 March 2016

[PHIL WILSON *in the Chair*]

Draft Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2016

2.30 pm

The Minister for Skills (Nick Boles): I beg to move,

That the Committee has considered the draft Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2016.

It is a pleasure to serve under your chairmanship, Mr Wilson.

We need a strong and efficient labour market—a market that gives people opportunities to find appropriate jobs and that gives employers access to the kind of labour that matches their skills needs—to maintain our economic growth and job creation. The recruitment sector plays an important role in making that happen by matching the demand for jobs to the demand for workers.

The sector is regulated by the Employment Agencies Act 1973 and the Conduct of Employment Agencies and Employment Businesses Regulations 2003—the conduct regulations. It is important that we reduce the regulatory burden on employment businesses and employment agencies as far as is possible, while increasing the opportunities for British workers to apply for British jobs.

Last year, the Government consulted on a package of measures, building on the previous consultation under the coalition Government, to remove a number of business-to-business regulations and to strengthen the existing legislation that prevents employment agencies and businesses from advertising jobs in other European economic area countries without advertising them in Great Britain and in English. I was inclined to skate over the specific deregulatory measures in the hope that the Committee would not be that interested in each of them, but I find myself facing the hon. Member for Cardiff West, who will have some very tricky questions for me, so I will detain the Committee with a little more detail on each of the deregulatory measures.

Regulation 9 of the conduct regulations, which is being removed, prevents employment agencies and employment businesses from claiming to be acting on one basis to the work-seeker, while stating something different to the hirer. There is little evidence that the regulation serves a useful purpose. We do not need free-standing regulations to underpin a standard that would be enforceable to some extent through contract law or, in cases of fraud, through general criminal law.

Regulation 11 ensures that employment agencies and employment businesses cannot enter into a contract with a hirer on behalf of a worker, and vice versa. The regulation applies to all agencies and businesses, but it is mainly relevant to those operating in the entertainment

and modelling sectors. We are removing the regulation because there are sufficient protections in other parts of the conduct regulations, including regulation 16.

Regulation 17, which is also being removed from the conduct regulations, requires employment businesses to obtain agreement to terms with hirers. Although it is important for employment businesses to agree terms with hirers, we believe that it is a business-to-business arrangement and that the two parties should have more flexibility when agreeing such terms.

Regulation 23(1) of the conduct regulations covers situations in which more than one agency or employment business is involved in the supply of a work-seeker. We propose to remove the provision that requires agencies and employment businesses to make checks on one another. We also propose to remove the requirement for them to agree the capacity in which they are acting, which will be done as part of the business-to-business relationship, without the need for regulation.

We will keep the provisions in regulation 23(1) on sectors in which fees may be charged to work-seekers, which generally happens only in the entertainment and modelling sectors. However, we propose to amend the regulation to remove the references to employment businesses. Employment businesses—organisations that place workers on a temporary basis and continue to employ them while they are on assignments—are not widely used in those sectors. Additionally, if an agency in those sectors uses an employment business to supply a work-seeker, regulation 12 should ensure timely payment for the worker in any case.

We also propose to remove from schedule 4 to the conduct regulations the requirement to include certain particulars in the records kept by employment agencies and employment businesses relating to work-seekers. Those records will no longer need to include the date on which the application was received, details of any requirements specified by the work-seeker in relation to taking up employment, and the date on which the application was withdrawn or the contract terminated.

The final deregulatory measures that we are proposing will amend schedule 5 to the conduct regulations and remove schedule 6, thereby eradicating the requirements to include certain particulars in the records kept by agencies and businesses relating to the hirer. Those records will no longer need to include the date that the application was received; the hirer's name, address and location of employment, if different; the terms offered in respect of the position the hirer seeks to fill; a copy of the terms between the employment agency or business and the hirer; and any document recording any variations, names of work-seekers introduced or supplied, and details of each resulting engagement and the date from which it takes effect.

Removing schedule 6 will eliminate the requirement for agencies and businesses to keep particulars relating to any other employment agency or business. The amendments proposed to schedules 4 and 5, and the removal of schedule 6, will remove the burden of unnecessary record-keeping on agencies and businesses, while having no detrimental impact on the protection of workers.

I turn to the banning of overseas-only recruitment. The current regulation 27A prevents employment agencies and businesses from advertising specific vacancies for a job based in Great Britain in other European economic area countries without advertising it in Great Britain and in English either before or at the same time. As part of last year's consultation, we sought views on extending the regulation to apply to generic recruitment campaigns. That will close a loophole and increase the opportunities for British workers to apply for British jobs. The proposal will not stop agencies recruiting overseas or in additional languages; we are just trying to ensure that there is a level playing field for British workers by giving them equal access to work through agencies.

Kevin Brennan (Cardiff West) (Lab): We agree with that part of what the Minister is proposing. However, does he acknowledge that, in response to the Government's consultation, only two organisations in the whole country said that they had information about jobs that had been advertised solely in other EEA countries? Is there any further evidence that there is a genuine problem?

Nick Boles: I am happy to get back to the hon. Gentleman if there is any further evidence, but even two is two too many. The measures will reassure people. Even if the loophole is not necessarily being abused a great deal, the provision will reassure people that British workers are being given a fair crack at any job opportunity that opens up in this country.

That brings me to the conclusion of my introductory comments, and I hope that the Committee will support the regulations.

2.37 pm

Kevin Brennan: It is a pleasure to serve under your chairmanship for the first time, Mr Wilson.

It is a pity that all these proposals are rolled into one. On the latter part of the Minister's remarks, I think we all agree with the notion that if agencies are advertising jobs generically across Europe, they should obviously be advertising them in the English language and to workers in this country, so that they have the opportunity to apply. He is absolutely right about that. Although the consultation did not provide much evidence of jobs being advertised solely in EEA countries, it would be interesting to know whether there is more evidence of that happening. We would all like to hear where, how and why that is going on. The Government are making a positive and helpful addition to regulation 27A through this statutory instrument.

I am pleased that the Minister did not skate over the other regulations, because they are significant and quite controversial, even though he may not have chosen to refer to that fact. Agency workers are often the most vulnerable workers. They do not have the same protections that other workers often have. Some agency workers are highly skilled and benefit from the flexibility of agency work, but many are in insecure and low-paid jobs.

Recently, the media have often highlighted a lot of the abuse that happens to agency workers in the United Kingdom. Their employment relationship is more complicated than that of other workers because it is a

tripartite relationship—an agency is involved, as well as the employer and the worker themselves. They are often vulnerable to the abuse of travel and subsistence schemes; the underpayment of national insurance contributions; and the loss of contributory benefits, including the state pension, statutory sick pay, and maternity and paternity pay. Sometimes, non-compliance with the minimum legal standards and the mistreatment of workers goes on in the agency sector. Obviously, that is not universal, but those people are more vulnerable to such treatment.

In my constituency casework, I have come across, as others may have done, parents coming in with their children who are embarking on their first jobs as adults and being mistreated in the workplace. They feel they have no redress because the jobs were secured through an agency. That is why we should be careful when we seek to unpick regulations that were put in place to protect workers in more vulnerable occupations and situations.

As the Minister anticipated, I looked carefully at what he was proposing and, in particular, at the responses to the Government's consultation on the proposed deregulation. A different picture is painted if the proposal is looked at from the perspective of the TUC, which, as is its wont, is naturally that of the worker.

The TUC's response to the Minister's proposal to remove regulation 9 of the conduct regulations was that it would have a negative effect on work-seekers, employment agencies, employment businesses and hirers; so not just on the workers. Its reasoning is that transparency is particularly important in the agency sector because of its transient nature and the tripartite relationship between the employer, employee and agency.

The proposal to repeal regulation 9 will remove the prohibition on employment businesses and agencies purporting to the work-seeker to be acting as an agency, while purporting to the hirer to be acting as an employment business, and vice versa. That is what the regulation protects against. The TUC believes that its repeal will increase the vulnerability of agency workers and could lead to work-seekers being misled into believing that an agency is trying to find them a permanent post, when in fact it is arranging a temporary assignment offering worse pay, fewer employment rights and less job security.

The TUC is also concerned that the removal of the regulation might encourage unscrupulous practices by some agencies. Interestingly, it is particularly concerned about the entertainment sector. As someone who has occasionally taken a musical booking, I have a particular interest. I should declare an interest as a member of the Musicians Union, Mr Wilson.

For example, an agency could be approached by a venue that is seeking to book an act. The venue might offer to pay £1,000 for an act. The agency could go to the act and say, "I can get you a gig for £500." The agent informs the act that it is acting as an employment agency and charges a 15% fee, which is normal practice. That is £75 it is making from the act, as a fee for arranging the booking. It can then go to the venue and say that it has found the artist and they are happy to collect the £1,000 that the venue is offering. The agency makes an additional £500 on the deal by doing that.

[Kevin Brennan]

The TUC fears that the removal of regulation 9 could lead to an increase in that type of practice. Will the Minister respond to the direct concern that it could open the door to more unscrupulous practices of that kind?

The Government also seek to remove regulation 11 of the conduct regulations. In response to the Government consultation, the TUC felt that the removal of regulation 11 could have a negative impact on work-seekers, employment agencies, employment businesses and hirers. It has held the view for many years that up-front fees to agencies in the entertainment sector ought to be banned. Aspiring artists can often be enticed into paying a fee to register with an agency, even though there is very limited prospect of their gaining work via that agency. That is why the TUC has expressed concern about the Government's proposal to remove regulation 11.

I would be glad to hear from the Minister whether the TUC has a point, in that agency workers often face problems when agents negotiate deals on their behalf, including difficulties recovering adequate payments for the use of photo shoots in a modelling contract, for example, and enforcing usage periods. Those artists can be prevented under the terms of the agreement from contacting the end client. They are obviously reluctant to take action against their agents, because they depend on them for future work.

The concern expressed in the consultation, as the Minister must be aware, was that removing regulation 11 would reduce transparency and accountability in the agency sector, and mean that agencies were no longer required to notify the work-seeker promptly of the terms of any contract they entered into on their behalf. The removal of regulation 11 might make things more difficult for the vulnerable people in such transactions and make it more difficult for work-seekers to enforce their rights.

The removal of regulation 11(6) would mean that agencies were no longer prohibited from entering into contracts between a work-seeker and a hirer on behalf of both parties. That could open the way for agencies to negotiate unfair deals. I would be grateful for the Minister's response to that concern, which was expressed in the consultation, and to hear why the Government feel they do not need to take it into account.

Concern was also expressed in the consultation about the removal of regulation 17 of the conduct regulations. Generally speaking, it is good practice for agencies and employment businesses to agree terms and conditions with the hirer in advance, before any assignments start. There is a case to be made that all agencies should be required to publish on their website standard terms and conditions, including any commission rates and charges. That would be a positive regulation to introduce.

However, that proposal is not being implemented. Instead, regulation 17 is being repealed. Regulation 17 requires agencies and hirers to agree the terms before workers are placed on assignments. Its removal will reduce the level of transparency. It could mean that agency workers are more vulnerable to exploitation and make it more difficult for them to enforce their rights. It could also lead to hirers and agency workers being charged unexpected fees during the course of an assignment.

Regulation 17(1)(c) requires employment businesses and hirers to agree

“the procedure to be followed if a work-seeker introduced or supplied to the hirer proves unsatisfactory”.

That is an important safeguard because it helps to ensure that agency workers are treated consistently and are not victimised. Removing that provision will increase the risk of agency workers being discriminated against because of race, sex, pregnancy, disability or even, in some cases, membership of a trade union. Again, legitimate concern has been raised about the removal of the regulation. This is not simply a matter of removing unnecessary regulation. This is regulation that provides important protection to vulnerable workers.

The Government propose to remove part of regulation 23, rather than the whole of it. Regulation 23 requires employment agencies and businesses to check whether any employment agencies or businesses to which they plan to subcontract work are suitable, which provides important checks. The Government propose to remove sub-paragraphs (a) and (b) of paragraph (1), which will mean that employment businesses have less incentive to carry out effective checks on their supply chains. In the absence of prior checks by agencies on the suitability of subcontractors, the onus for enforcing minimum employment rights will rest on agency workers themselves. Removing that part of the conduct regulations will mean that there is no responsibility on the agent to do so. I would be grateful if the Minister explained why that important protection is not being retained.

I welcome the fact that the Government are retaining regulation 27, on which they changed their mind in response to the consultation. I also welcome the amendment to regulation 27A on advertising generically across Europe and only in languages other than English, which is a completely unacceptable practice, even if there was not much evidence of it in the Government consultation.

I will not refer to the schedules, because they merely give effect to many of the measures that I have described.

The Opposition are concerned that the conduct regulations are not simply an unnecessary burden on business. We want flexible labour markets, but the Government say that their intention is to retain

“those regulations required to ensure that people who are looking for work are protected against potential exploitation.”

A strong case has been made that many of the regulations that the Government seek to remove protect people who are looking for work against exploitation. I look forward to hearing the Minister's response before I advise my hon. Friends which way to vote.

2.52 pm

Neil Gray (Airdrie and Shotts) (SNP): It is a pleasure to serve under your chairmanship, Mr Wilson. I do not have much to add to the comprehensive assessment of the hon. Member for Cardiff West; we come at this debate from a very similar position. I ask the Minister to reflect, and to advise us on the consultation and discussion that was carried out with the Scottish Government and Scottish agencies on this matter.

2.52 pm

Nick Boles: I anticipated that the forensic zeal of the hon. Member for Cardiff West would not be wanting today; it has never been lacking in any of our previous engagements. As ever, he asked some extremely good questions.

We are entirely at one in recognising that agency workers are potentially vulnerable and open to exploitation. When we started this process, we asked ourselves which laws and regulations protect those potentially vulnerable workers, whether they are being enforced effectively, and by whom. We may end up discovering that the only difference of opinion is that we do not think that the regulations that we propose to repeal or amend are, in practice, necessary to protect potentially vulnerable agency workers from exploitation, because there are other, more effective protections that can be and are being enforced.

I hope that our good faith is underlined by the fact that, as the hon. Gentleman noted, although we originally proposed to remove regulation 27, we listened to the feedback in the consultation, in which respondents raised concerns that it might disadvantage work-seekers if we removed the specification of what should be included in job adverts, and concluded that we should not remove it.

Let me turn to the regulations that we are proposing to remove or amend. I will do my best to reassure the hon. Gentleman. Regulation 9 prevents agencies from acting on one basis for work-seekers and stating something different to hirers. The reason we do not believe that removing it will put work-seekers at risk is that we have not received any evidence of that through the work of the employment agency standards inspectorate or from most of the responses. I acknowledge that the Trades Union Congress took a different view, but no specific evidence has been provided that employment agencies and businesses do claim to act in a different capacity. Therefore, we do not believe that the removal of the regulation will have a negative impact.

I guess that, if there is a philosophical difference between the Government and the Opposition, it is that we do not want to have regulations that are theoretically useful, but unnecessary in practice. We want to be persuaded that regulation is necessary in practice. I am advised that there are existing protections in contract law to protect people, for instance, from misrepresentation by an agency or employment business that cover the sort of abuses the hon. Gentleman is worried about. I repeat that the employment agency standards inspectorate, which sits within the Department for Business, Innovation and Skills, has not given us any evidence of this particular situation arising.

Regulation 11 ensures that agencies cannot enter a contract with a hirer on behalf of a worker, and vice versa. It would most likely protect work-seekers in the entertainment and modelling sectors. The reason we have decided to remove regulation 11 is that we believe that sufficient protection already exists in those sectors through regulation 16, which ensures that an agency that is permitted to charge work-seekers a fee for finding them work must agree the specific terms with the worker,

including whether the agency is entitled to act on their behalf in concluding a work contract. Given the existence and retention of regulation 16, we do not believe that the removal of regulation 11 is likely to have a significant impact.

The hon. Gentleman asked about the removal of regulation 17, which requires employment businesses to obtain agreement to terms with hirers. He raised the concern that that would leave work-seekers at risk of not being clear what terms of employment businesses had agreed with hirers. Again, we believe that the terms agreed between the employment business and the hirer are properly part of the business-to-business relationship, and that the two parties should have more flexibility when agreeing terms. The existing regulation imposes a potential criminal liability, which we think is disproportionate for such a business-to-business relationship.

The work-seeker would not be affected by the removal of regulation 17, as the terms of employment between the work-seeker and the employment business would still need to be agreed in line with regulations 14, 15 and 18, all of which we are not proposing to remove. We believe that the work-seeker's interests are explicitly protected and that the agreements between the employment business and the hirer are, in a sense, a matter for them.

The hon. Gentleman asked about the amendment to regulation 23. It may be that there is a slight lack of clarity on our part here, although I hope not. We believe that we are amending the regulation to remove employment businesses from its scope. That is because this regulation mainly affects those in the entertainment and modelling sectors, where employment businesses are not widely used. If an employment business is used in such a capacity, we believe that sufficient provision exists in regulation 12, which ensures that a work-seeker is paid, so there will not be a lack of protection, even though we do not believe that employment businesses generally operate in the relevant sectors.

I hope that I have given the hon. Gentleman some reassurance, but I am happy for him to come back to me if not.

The hon. Member for Airdrie and Shotts asked about the extent to which there have been discussions with the Scottish Government. The consultation was public and open to anyone to respond to. As he will be aware, employment law is a reserved matter, so we believe that most of the consultation respondents, both positive and negative, including the TUC, were acting as representatives of workers in Scotland and the other devolved Administrations, because employment law is devolved. We did not specifically consult the Scottish Government because this is a reserved matter.

If there are no further questions, I hope the Committee will see fit to support the regulations.

Kevin Brennan: I thank the Minister for his comprehensive and thorough response, and for the courteous way in which he has dealt with the questions from the Opposition. To reiterate, we support the proposed change to regulation 27A, although he did not offer further evidence that it was a widespread and serious issue.

[Kevin Brennan]

The problem for the Opposition is that we do not feel that it is proportionate and appropriate to remove the other regulations, given that we are talking about members of the workforce and work-seekers who are in the most vulnerable positions. If anything, this is a group of workers that is becoming larger as the labour market and employment practices and patterns change across the country. We are not here to debate why that is happening, but I think we would all acknowledge that it is. As I indicated in my remarks earlier, my constituency casework has involved increasing numbers of people who are concerned about how they have been treated in the workplace after being employed via an agency.

Notwithstanding my gratitude to the Minister for his thorough and serious response, it is right that we register our opposition to the changes that he is proposing to the regulations, other than regulation 27A, by dividing the Committee.

Question put.

The Committee divided: Ayes 10, Noes 7.

Division No. 1]

Boles, Nick
Foster, Kevin
Howell, John
James, Margot
Jones, rh Mr David

Brennan, Kevin
Creasy, Stella
Gray, Neil
Hunt, Tristram

AYES

Mackintosh, David
Morris, Anne Marie
Scully, Paul
Throup, Maggie
Zahawi, Nadhim

NOES

Kinnock, Stephen
Mahmood, Shabana
Morden, Jessica

Question accordingly agreed to.

Resolved,

That the Committee has considered the draft Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2016.

3.4 pm

Committee rose.