

**BIS** | Department for Business  
Innovation & Skills

**ENFORCEMENT POLICY  
STATEMENT**

Employment Agency  
Standards Inspectorate  
(EAS)

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# 1. Introduction

The mission of the Employment Agency Standards inspectorate (EAS) is to work with agencies, employers and workers to ensure compliance with employment rights, particularly for vulnerable agency workers.

The main role of EAS is to ensure compliance with the law. EAS enforcement policy is in accordance with the Regulators' Compliance Code and the regulatory principles required under the Legislative and Regulatory Reform Act 2006.

The code can be downloaded from the BIS website:

[www.bis.gov.uk/files/file45019.pdf](http://www.bis.gov.uk/files/file45019.pdf)

Firm but fair enforcement is implemented using the five key principles of good regulation as set out by the Hampton code and The Better Regulation Executive (BRE): [www.betterregulation.gov.uk](http://www.betterregulation.gov.uk).

The Employment Agencies Act 1973 (as amended), and associated Conduct of Employment Agencies and Employment Businesses Regulations 2003 (as amended), require all employment agencies and employment businesses to abide by specified minimum standards of conduct.

The Employment Agencies Act can be downloaded from:

[www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1973/cukpga\\_19730035\\_en\\_1](http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1973/cukpga_19730035_en_1).

The Conduct Regulations and the 2007 Amendment Regulations can be downloaded from: [www.opsi.gov.uk/si/si2003/20033319.htm](http://www.opsi.gov.uk/si/si2003/20033319.htm) and

[www.opsi.gov.uk/si/si2007/uksi\\_20073575\\_en\\_1](http://www.opsi.gov.uk/si/si2007/uksi_20073575_en_1).

The enforcement functions under the Act are carried out by EAS Inspectors, Regional Inspectors and the EAS Management Team. The enforcement team is assisted by the Inspectorate Support Team.

## **2. Purpose of Enforcement**

The purpose of enforcement is to encourage and sustain compliance with the legislation. Following an investigation or inspection, any breaches of the legislation will be brought to the attention of the offender. Employment agencies and employment businesses must ensure they take prompt action to comply with the legislation.

## **3. Principles of Enforcement**

The Hampton principles (regulators should behave in fair, open and proportionate ways, and enforcement should be targeted at areas where the risk to society is greatest) require enforcement activity to be targeted at non-compliance and to be proportionate in how it responds to non-compliance.

The Better Regulation Executive and EAS are part of the Department for Business, Innovation and Skills (BIS) and apply the five principles of good regulation.

### ***Proportionality***

EAS will seek to secure compliance with the legislation by ensuring a proportionate response to the offences by the most appropriate enforcement option. Proportionality in obtaining compliance will include intervention only where necessary, taking into account the degree of the risk of harm caused by non-compliance.

### ***Accountability***

EAS must be able to justify decisions and be accountable for the efficiency, effectiveness and cost of the inspectorate. EAS will publish an annual report detailing the performance of the inspectorate for the previous year. EAS's Service Standards are set out on its website, at: [www.bis.gov.uk/eas](http://www.bis.gov.uk/eas)

### ***Consistency***

The EAS inspectorate will be consistent in its approach to enforcement in all the legal jurisdictions in which it operates (England, Wales and Scotland). Consistency means taking a similar approach in similar circumstances to achieve similar ends. However, this does not mean uniformity. Discretion will be applied. EAS recognises that the facts and circumstances of cases will never be identical and have to be considered on their own merits.

### ***Transparency***

Transparency means helping those regulated to understand what is required from them and what they should expect from the regulator. EAS will be clear about the consequences of non-compliance (i.e. warning letter, prosecution and/or prohibition).

### ***Targeting***

EAS applies a risk based assessment process for determining priorities and directing compliance and enforcement work to where it is likely to achieve results. The process includes a weighting towards:

- Geographic areas where EAS receive higher than average numbers of complaints, or a pattern is emerging;
- Sectors where EAS receive higher than average numbers of complaints, or a pattern is emerging;
- Where the nature of the activity is high risk;
- History of previous inspections of employment businesses or agencies in particular sectors or locations;
- Employment businesses or agencies that information from other related enforcement bodies (such as HM Revenue and Customs' National Minimum Wage team) suggests could be higher risk.
- EAS is continuing to refine its risk-based assessment procedures.

#### **4. Investigations**

EAS will consider every complaint received about an agency. In deciding whether further investigation is needed, and, if it is, the extent to which an agency needs to be investigated, EAS will:

- Consider whether the complaint is in scope of the legislation enforced by EAS. (Inspectors can only investigate matters that fall within the remit of the Employment Agencies Act and Conduct Regulations);
- See what other information can be obtained regarding the agency, both from the complainant and other sources; and
- Consider if the allegations or substance of the complaint is vexatious or malicious.

Details from complainants will be treated in confidence and not disclosed during an investigation unless they have given EAS permission to disclose their information.

Following receipt of a complaint or information which needs to be followed up, EAS will conduct an investigation in order to establish:

- Causes of complaint;
- Any non compliance with the Act and conduct regulations;
- The seriousness of any breaches of the law;
- What action has been taken or needs to be taken in order to comply;
- An appropriate and proportionate response to any breaches of the law;
- That compliance with the law has been obtained

The EAS enforcement powers set out in Section 9 (1) of the Employment Agencies Act 1973 give EAS inspectors powers to inspect those premises which they believe are being used, or have been used, for the purpose of an employment agency or employment business. Inspectors can inspect, copy or remove (for the purpose of copying), any records and documents kept in accordance with the Act or Conduct Regulations. It is an offence under Section (9)3 for a person to obstruct an inspector in the exercise of their powers. If the EAS inspector is refused entry or access to records, they may issue a formal caution (in accordance with the Police and Criminal Evidence Act 1984).

## **5. Inspections**

EAS also acts proactively in carrying out targeted inspections of employment agencies and employment businesses. These targeted operations are based on risk analysis and intelligence received. However, where appropriate, inspectors will endeavour to perform their duties in a business friendly way in order to cause least disruption to business and the economy. Targeted operations can be in sector type and/or geographical area. When carrying out inspections of agency records, EAS will be using their enforcement powers (see section 4 above).

## **6. What to expect during an investigation or inspection**

Where we decide that there is sufficient cause to conduct an investigation and/or inspection, the inspector can either contact or visit the agency's premises. All EAS inspectors are appointed under delegated powers by the Secretary of State and will produce their warrants confirming their appointment as an inspector.

When carrying out an investigation/inspection, EAS inspectors will complete an appropriate record of inspection. Inspectors may ask for examples of an agency's terms and conditions to work-seekers and terms of business with hirers. They will normally inspect: details of several placements (temporary assignments or bookings); details of any additional services provided to work-seekers; payments of fees or wages to work-seekers, (including where necessary timesheets, invoices remittances, bank statements etc) and advertising of vacancies.

In addition, inspectors are able to examine financial records and other financial documents. EAS can also, on written notice, require a bank to supply the financial records where the person operating an agency/employment business has failed to comply with a written request to do so.

EAS inspectors can demand detailed information not only from the agency's Directors, Sole Traders and Managers, but also from others (e.g. employees and third parties), who may be in possession of relevant documents and information. Inspectors may also extend their investigation where necessary and contact users of the agency services (e.g. hirers and work-seekers) for information during the course of an investigation.

## **7. Infringements of the Act and Regulations**

Where infringements are found, EAS will seek resolution of matters by the most appropriate enforcement action. This can be achieved in most cases by issuing warning letters but in extreme cases could lead to prosecution and/or prohibition.

## **8. Warning Letters**

Usually EAS will initially seek compliance by issuing warning letters. Every warning letter will contain a clear statement of the infringements that have been found. They will also contain a formal warning of the EAS powers regarding prosecution and prohibition.

Those issued with warning letters will be asked to confirm in writing what remedial action they intend to take, or have taken, within a set timeframe in order to correct each infringement and, where appropriate, to provide supporting evidence.

## **9. Criminal Proceedings**

In determining whether or not it is appropriate to refer a case for criminal proceedings, EAS will consider a range of factors including:

- The extent to which work-seekers have been affected by the breach and whether they have been subjected to abuse by the failure of the agency or employment business to comply with the law;
- Any explanation or statement that has been provided by the agency or employment business;
- Whether the agency or employment business has been found to have breached the legislation previously and has disregarded any previous advice and guidance regarding compliance;
- The impact or potential impact of the offence on the industry.
- The severity and degree of non compliance;
- The benefit, financial or otherwise, to the offender arising from the failure to comply;
- Whether there sufficient admissible and reliable evidence to provide a realistic prospect of conviction;
- Whether it would be in the public interest.

## **10. Prosecution**

The purpose of prosecution is condemnatory and a deterrent to others. Where there is sufficient evidence and it is in the public interest, EAS will normally prosecute the offences as defined by the 1973 Act and associated regulations.

## ***Prosecution in England and Wales***

EAS will engage BIS prosecution lawyers to decide whether it is appropriate to instigate proceedings.

The decision whether to prosecute will take account of the evidential stage and the relevant public interest factors set down by the Director of Public Prosecutions in the Code for Crown Prosecutors. (A non-exhaustive list of some common public interest factors can be found at 4.16 and 4.17 of the Code for Crown Prosecutors- available at [www.cps.gov.uk](http://www.cps.gov.uk)). The Code also requires that the decision to prosecute is kept under continuous review and any new facts or circumstances are considered.

Prosecutions in England and Wales commence in a Magistrate's Court. However, cases which are taken forward can be tried "either way". This means that the case can be tried in a Magistrate's Court where the current maximum fine is £5,000 per offence (Level 5) or the department can recommend it is tried in a Crown Court which can result in potentially unlimited fines.

## ***Prosecution in Scotland***

The Procurator Fiscal needs to be satisfied that there is sufficient evidence and that prosecution is in the public interest in Scotland before deciding whether to bring a prosecution. This may be on the basis of a recommendation by EAS; however, the decision as to proceedings is made by the prosecutor, having taken into account the evidence and judgement of the EAS inspectorate.

The Crown Office and Procurator Fiscal Service Prosecution Code can be found at:

[www.copfs.gov.uk/Resource/Doc/13423/0000034.pdf](http://www.copfs.gov.uk/Resource/Doc/13423/0000034.pdf)

## **11. Prohibition**

Under section 3(a) of the Employment Agencies Act 1973, the EAS can, on application by the Secretary of State, apply to an Employment Tribunal to prohibit (ban) an individual or corporation from running or being involved in running an employment agency or employment business, because of their misconduct or unsuitability.

A prohibition can take different forms. Generally, once someone has been prohibited, they cannot run or be involved with running any employment agency or employment business during their prohibition period. However, different conditions can be attached. For example, a person can be prohibited from running an agency from their own home, but not necessarily from business premises.

A prohibition may be sought by EAS after a successful prosecution for offences under the Conduct of Employment Agencies or Employment Businesses Regulations. EAS may also use other evidence, including

prosecutions by other government departments, as a basis for applications for a prohibition.

The maximum period of any prohibition order is 10 years. Any person who breaches a prohibition order can face criminal proceedings.

## **12. Publicity**

EAS maintains a public list of individuals who have been prohibited from running an employment business on the BIS website at:  
<http://www.bis.gov.uk/policies/employment-matters/eas/prohibited-persons>

The EAS also seeks press and other publicity for successful prosecutions and major investigations to help encourage higher levels of compliance.

## **13. Corporations, Partnerships and Individuals**

Prosecution and/or prohibition will be taken against individual persons considered to be responsible for the offence. Where it is alleged that a corporation (partnership, limited company, or association) is involved in the offence, EAS can also prosecute that legal entity. EAS may also commence legal proceedings against officers of any corporation, including directors, managers, consultants, who have control over the relevant activities and there is considered to be sufficient evidence of their guilt or neglect.

## **14. Sharing information**

Section 9 (4) of the Employment Agencies Act 1973 provides that information obtained in the course of exercising the powers conferred by the Act shall be not disclosed without the consent of the person by whom the information was furnished, unless by order from the Secretary of State.

Information can also be shared where there is a legal gateway. Currently EAS can share information with the Gangmasters Licensing Authority (GLA) and HM Revenue & Customs National Minimum Wage officers.

In addition, EAS can disclose information to certain other public authorities under section 17 of the Anti-Terrorism, Crime and Security Act 2001 if it is relevant for the purposes of any criminal investigations or proceedings, or the initiation of such investigations or proceedings.

