Department for
Business, Energy
& Industrial Strategy

GOOD WORK: THE TAYLOR REVIEW OF MODERN WORKING PRACTICES

Consultation on agency workers recommendations

February 2018

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Any enquiries regarding this publication should be sent to us at awconsultation@beis.gov.uk.

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Introduction

The Taylor Review of Modern Working Practices

In October 2016 the Prime Minister commissioned Matthew Taylor (Chief Executive of the Royal Society of the Arts) to conduct an independent review into modern working practices, focused on assessing how employment practices might need to change in order to keep pace with modern business models.

In July 2017, The Review of Modern Working Practices was published, which included 53 recommendations. He considered a range of issues, including the implications of new forms of work, the rise of digital platforms and the impact of new working methods on employee rights, responsibilities, freedoms and obligations.

The review noted that the UK labour-market is characterised by flexibility, meaning that individuals and businesses are free to agree terms and conditions that suit them best. He highlighted the benefits of this model, with the UK being in a position of overall strength. Employment levels and rates are at historic highs and comparatively we perform well internationally.

Flexibility has been a key part of enabling business to respond to changing market conditions and has supported record employment rates. Individuals have the opportunity to work in a range of different ways, on hours that fit around other responsibilities. However, one of the issues raised through the review was that some employers seem to use this flexibility to transfer risk to workers, and in some cases workers do not feel that they benefit from the flexible arrangement.

The review termed this 'one-sided flexibility' and argued that flexibility should genuinely be a mutually beneficial arrangement. He noted that redressing the current overall imbalance will not have the necessary impact unless people are able to enforce their rights when things go wrong. The recruitment sector is one part of this and the review made a number of recommendations in relation to agency workers and enforcement of employment rights. These are considered in this consultation document.

We need to ensure that we strike the right balance between maintaining the flexibility in the labour market that the review so rightly championed, whilst equally ensuring that, in a changing work environment, workers are afforded the necessary rights and protections, and have access to the information they require.

The recruitment sector

This government is committed to encouraging growth to create wealth and jobs. The flexibility of the UK's labour market allows people to move between jobs and allows businesses to quickly respond to changing demands. The government is committed to ensuring that employment law supports and maintains the UK's flexible labour market.

The recruitment sector plays an important role in ensuring that the UK's labour market works effectively. It provides a service to people seeking jobs, and businesses seeking workers. The sector has two main types of legally defined types of service; *employment agencies* (which introduce people to hirers to be employed by the hirer directly); and *employment businesses* (also known as temping agencies) which employ or engage people to work under the supervision of another person.

The sector is regulated by the Employment Agencies Act 1973 and the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (the Conduct Regulations). These laws are enforced by the Employment Agency Standards inspectorate (EAS).

The legislation covers principles such as restrictions on fees, ensuring that temporary workers are paid for the work they have done, record-keeping, advertising, and ensuring that identity and suitability checks are carried out on work seekers. The regulations also provide a framework for arrangements between agencies and employment business; they also cover the arrangements between hiring businesses which include contracts between work seekers and agencies / employment businesses.

Any reforms that are made need to ensure that the sector continues to operate efficiently and provide a reliable and trustworthy service to hiring businesses and work- seekers. The review found that more was needed to ensure that:

There is clarity on who is responsible for paying temporary workers for the work they have done: The tripartite arrangement between a temporary work-seeker, an employment business and a hirer can mean that it is unclear who is responsible for paying the temporary work-seeker.

There is clarity on rates of pay and any deductions made: Employment businesses and employment agencies need to be transparent on any lawful deductions to be made.

Work seekers have the confidence to use the recruitment sector and are able to assert their rights: The government wants to ensure that work seekers, and hiring businesses, are able to use the recruitment sector with confidence. We believe that increased transparency in the recruitment sector would lead to greater confidence and rising standards across the sector.

Purpose of this consultation

The purpose of this consultation is to seek views on the recommendations made by The Review of Modern Working Practices published on 11 July 2017 regarding agency workers and the enforcement of employment rights.

The outcome of this consultation may result in amendments to the current Employment Agencies Act 1973 (the Act), the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (the Conduct Regulations) – both as amended - and the Agency Worker Regulations 2010 (AWR). It is a statutory requirement to consult on changes to this legislation.

The recommendations made by the review that are in scope for this consultation are:

- Government should amend the legislation to improve the transparency of information which must be provided to work seekers both in terms of rates of pay and those responsible for paying them;
- The Director of Labour Market Enforcement should consider whether the remit of EAS ought to be extended to cover policing umbrella companies and other intermediaries in the supply chain;
- The government should repeal the legislation that allows work seekers to opt out of equal pay entitlements (known as the 'Swedish Derogation'); and
- The government should consider extending the remit of EAS to include compliance with the AWR.

The Director of Labour Market Enforcement (the Director), Professor Sir David Metcalf, is also considering the first two recommendations through a consultation that was part of the first Labour Market Enforcement strategy published on 19 July 2017.

We welcome views from trade unions, employer associations and other interested organisations and individuals.

Respond by: *9th May 2018*

Enquiries to:

Department for Business, Energy & Industrial
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London, SW1H
0ET Tel: 0207
215 4586
Email: awconsultation@beis.gov.uk
Consultation reference: Good Work: The Taylor Review of Modern Working Practices – Agency Workers.

Territorial extent:

England, Scotland and Wales.

How to respond

Your response will be most useful if it is framed in direct response to the questions posed, though further comments and evidence are also welcome.

Please provide responses to the email address above.

Additional copies:

You may make copies of this document without seeking permission. An electronic version can be found at https://www.gov.uk/government/consultations/agency-workers-recommendations

No hardcopies of this document are available.

Confidentiality and data protection

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information legislation (primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004).

If you want information that you provide to be treated as confidential please say so clearly in writing when you send your response to the consultation. It would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded by us as a confidentiality request.

We will summarise all responses and place this summary on the GOV.UK website. This summary will include a list of names or organisations that responded but not people's personal names, addresses or other contact details.

Quality assurance

This consultation has been carried out in accordance with the Government's Consultation Principles.

If you have any complaints about the consultation process (as opposed to comments about the issues which are the subject of the consultation) please address them to:

Email: beis.bru@beis.gov.uk

Section 1. Improving the transparency of information provided to work seekers

Recommendation: Government should amend the legislation to improve the transparency of information which must be provided to work seekers[1] both in terms of rates of pay and those responsible for paying them.

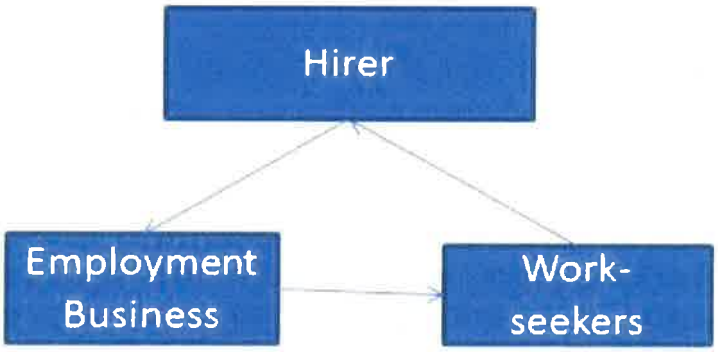
The government accepts this recommendation. The purpose of the consultation is to understand how we implement greater transparency of information.

Background

1. The review noted the growing complexity for work seekers in understanding who is ultimately responsible for paying them. The number of organisations involved in the chain can be quite lengthy, and it is not unusual for a work seeker's money to pass through a number of different organisations before they receive payment. This is not illegal, unless deductions are being made in breach of legislation, but it can be confusing.

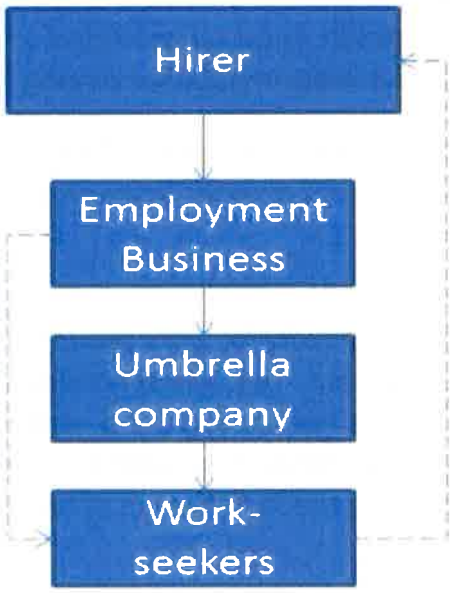
2. There are a number of ways in which a work seeker could get paid when working through an employment business.

3. Traditionally this relationship has been a tripartite one consisting of a hirer (business), an employment business and a work seeker. In practice, the work seeker is employed and paid by the employment business. The hirer pays the employment business for the supply of the work seeker and the work that they carry out for the hirer.



[1] Work seekers are people or limited company contractors contracted by employment businesses, intermediaries or umbrella companies and who are placed with a third-party to carry out 'temporary agency work'.

4. Alternatively, the employment business can use a third party company such as an umbrella company or intermediary to process the work seeker's wages. In this scenario the working relationship sees the work seeker in most cases being employed via an umbrella company, essentially for payroll purposes.



Key: Payment line
And --- Engagement line

5. Where an umbrella company is involved in paying a work seeker, the hourly or daily rate that the employment business has agreed to pay the work seeker is paid to the umbrella company as the umbrella company's income. The umbrella company could retain from this sum an amount to cover its administration fee (often referred to as "margin"), employers' National Insurance Contributions and holiday pay, and the Apprenticeship Levy if appropriate, in line with the recent tax changes. The remainder is then classed as the work-seeker's gross pay, from which income tax and employees' National Insurance Contributions are deducted, with the work seeker receiving the resultant net pay.

6. Where payment is made through a third party, the review found there is the potential for a work seeker to be provided with insufficient, if any, information about lawful deductions. For example, the rate of pay offered for an assignment may be that which an individual would receive if they had set themselves up as a limited company. Alternatively, an intermediary may make deductions as if the worker were an employee at the company, but the review found evidence this was not always clear to the worker.

7. As a result it is not uncommon for the gross amount shown on pay slips to differ from the advertised rate of pay. Employment Agency Standards (EAS) Inspectorate also sees cases where the work seeker is confused by who they are actually employed by.

8. The review noted that the levels of transparency on payment information and deductions had not improved and while most employment businesses[2] "..... *do provide information about pay rates and methods, this is not always as clear as it should be*".

9. The review also notes that: "....*More unscrupulous providers can bury important information in the small print of long contracts.*"

Consultation considerations

10. Our aim is to ensure that work seekers have sufficient information to understand who is paying them, what deductions are being made and for what reason. This will allow work seekers to make a better informed decision on whether to accept a contract.

11. Our proposal is that any contract/terms of business between a work seeker and an employment business should contain a "key facts" page which should be provided to work seekers at the time they register with the relevant organisation. This page would be presented at the start of **either registration or engagement** with an employment business or any job offer conversation so the work seeker fully understands what is being offered.

12. Currently, an employment business or employment agency can offer additional goods or non-work-finding services directly, or introduce the work-seeker to a third party who offers goods or services (this could be an Umbrella company or intermediary). If a fee is or may be charged for the goods or services, the work-seeker must be provided with specific written information. This must include what the goods or services are, how much they cost, who any money is payable to, the right to cancel and the length of notice required. It must include whether there are any refunds or rebates available once the use of the goods or services has been cancelled.

13. With the introduction of a key facts page, we would seek to <u>reaffirm</u> the current legal position in a standardised and consistent manner to show:

    a) Who will be responsible for paying the work seeker, and how they are being engaged;
    b) Any other fees, costs or charges that will be deducted and what they relate to.

14. The key facts page will <u>strengthen the current provision</u> to show additional information:

    c) Who will be responsible for the employment of the work seeker;

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[2] Employment businesses engage work seekers under terms of business or contract to then work under the supervision of another organisation. This is normally called 'temporary agency working' or 'temping'.

d) How much the work seeker will be paid by the umbrella company or intermediary ; if appropriate, including highlighting any fees payable to the umbrella or intermediary by the work seeker;
e) What statutory deductions will be made;
f) What additional benefits there are e.g. access to a benefit in kind scheme, childcare vouchers, group insurance policies.

15. We envisage the key facts document would be a standalone document that is in addition to other information that is provided to the work seeker. The employment business would be required to highlight the key facts document to the work seeker in a prominent way.

16. On the assumption that the requirement for the key facts page would be included in the Conduct of Employment Agencies and Employment Businesses Regulations 2003, the same penalties would apply for non-compliance. These penalties would be enforced by EAS and could range from the issue of a warning letter through to prosecution and/or prohibition (from owning/ running/managing an employment business) proceedings being brought by EAS.

Impact

17. The requirement to create a new information document as part of a contract will create a burden on employment businesses. Data from the Recruitment and Employment Confederation (REC) indicates that there were 1,197,928 temporary work placements in 2014/15. This number grew by an average of 37,000 in the preceding four years. On this basis, we assume 1.2 million key facts pages will need to be produced in Year 0, with 37,000 produced each year after that.

18. The total cost to employment agencies and businesses is estimated to range from £33,000 to approximately £1 million over a 10 year period. This is based on a working assumption that a key facts page can be drawn up in one hour or less and that one will be needed for each temporary worker who receives an offer of work. The exact time spent and pay grade of the individual discharging the task will vary depending on the size of the business.

19. We assume that small businesses are less likely to have dedicated HR staff, so it would likely be the general manager that would need to familiarise themselves with the information required, whereas larger employers could use a payroll or HR manager to conduct this task. This means there are different cost implications for different employment businesses.

20. However, there are steps that can be taken to minimise that burden. For example, government could make a standard template available online which could be tailored by employment businesses. There would be safeguards in the template to ensure that core information fields could not be deleted.

21. There is further detail in the impact assessment that accompanies this document.

Consultation questions

1) **To what extent would you agree that a 'key facts' page would support work seekers in making decisions about work?**

2) **What information would be important to include in a 'key facts' page?**

2) **(a) What conditions should be in place to ensure the 'key facts' page is provided and understood by the workseeker before any contractual engagement?**

3) **Should an employment business be required to ensure that the work seeker understands fully the information being given to them?**

4) **Do you feel an hour is an accurate estimate of the time it would take to produce information document for a work seeker?**

Section 2. Extending the remit of the Employment Agency Standards inspectorate to cover umbrella companies and intermediaries in the supply chain

Recommendation: The new Director of Labour Market Enforcement should consider whether the remit of the Employment Agencies Standards (EAS) Inspectorate ought to be extended to cover policing umbrella companies and other intermediaries in the supply chain.

This consultation seeks views on how the regulation of umbrella companies and other intermediaries by EAS would improve working conditions for work seekers.

Background

22. Umbrella companies provide different business models and in most cases engage work seekers on an overarching contract of employment and the work seeker becomes an employee of the umbrella company. An intermediary is any other organisation, such as a third party or any other body, which facilitates the engagement of a work seeker with a hirer by providing access to information about a role. Both play a third party role in respect of work seekers and hirers.

23. Commonly, umbrella companies perform a payroll function on behalf of work seekers. Umbrella companies were once more frequently used by higher skilled, higher earning work seekers. In recent years we understand they have become more used by work seekers working across the recruitment sector including those being paid at or near the National Minimum or National Living Wage. Being an employee of an umbrella company can be beneficial to a work seeker as they can move between employment businesses and retain continuity of employment (and payment). However, this is dependent on those employment businesses using, or being willing to use, the same umbrella company to make payments to the relevant work seekers.

24. In recent years, this model has been cited on an anecdotal basis as having been utilised by employment businesses to drive down their payroll costs. The model arguably has the potential to lead to less clarity for work seekers about their contractual relationship. There is no robust data on the impact of umbrella companies in the recruitment sector.

25. Umbrella companies and intermediaries are currently not directly regulated by EAS. However, they are required to comply more generally with current taxation and employment law, such as the Employment Rights Act 1996 (where the individual is employed by the Umbrella company).

26. Equally, there is an absence of robust data on the number of umbrella companies or intermediaries in existence, but it is estimated that the current number is in excess of 400. For example, Freelance Supermarket is a website[3] providing information for freelance workers and includes a list of umbrella companies that are available, but it is believed that there are significantly more umbrella companies operating in the UK.

27. The growth in the number of umbrella companies and their increased use by work seekers has increased the scope for poor practice. This is made more complex in that work seekers may not be using an umbrella company on a voluntary basis but because an employment business has a working arrangement to do so. This is not helped by the fact that work seekers have no redress or formalised complaints procedure outside of an Employment Tribunal or by using Acas's mediation services.

28. Articles in the media[4] have picked up on this, citing umbrella companies as an avenue by which temporary workers can be exploited, denying them basic employment rights and shifting the employer's responsibility to pay national insurance contributions (NICs) and pensions.

29. The review noted that umbrella companies and intermediaries played a legitimate role in the marketplace but "*...there have been examples of individuals being compelled into these arrangements or signed up to them with the detail hidden in the small print of a contract. This can result in a range of issues from a worker not knowing who their employer is if they want to make a complaint, to not fully understanding pay rates.*"

Consultation considerations

30. It is likely that increasing transparency would go some way to addressing the issues which can arise as a result of a work seeker being paid through an umbrella company or an intermediary. This would be a logical first step.

31. Subject to *the recommendations of the Director of Labour Market Enforcement*,Not coming out before MAY the government will look to legislate to bring certain activities of umbrella companies and other intermediaries within the regulatory scope of the EAS, so that work seekers using them are better supported and protected.

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[3] http://www.freelancesupermarket.com/profile/search/umbrella-asp.aspx

[4] https://www.theguardian.com/money/2016/oct/21/temporary-workers-umbrella-companies-extra-costs-dodging-ni- cutting-rights-supply-teachers https://www.ucatt.org.uk/files/Government%20umbrella%20consultation.pdf https://www.ft.com/content/14683c0c-e2ae-11e4-ba33-00144feab7de

32. Through legislation we could require umbrella companies and intermediaries to meet a set of minimum standards in line with the minimum requirements currently in place for employment businesses. This would also provide the work seeker with an avenue to make a complaint if an issue could not be resolved directly with the umbrella company or intermediary, without having to go to an Employment Tribunal.

33. It would also support the employment business industry by helping eradicate perceived "sharp practice" such as misleading work seekers about how much they will be earning and charging rates that appear uneconomic. This in turn would help create a more level playing field for legitimate businesses. Commenting on 'the review', one stakeholder said:

    '*We welcome the suggestion that umbrella companies should be policed by the Employment Agency Standards (EAS) Inspectorate. Such a move would help to raise standards in our sector and drive the cowboys out of business.*'

34. However, regulation (depending on the extent) could have an impact on legitimate business models by potentially increasing the cost of day to day operations. This in turn might lead to increased costs downstream to the hirers and ultimately to the workers if such pressures reduced willingness to hire or reduced hourly rates.

35. The Director of Labour Market Enforcement is already considering the question of regulation for umbrella companies through his recent consultation. However the review's observations provide a further opportunity to seek views and evidence from the industry and users of umbrella companies (both work seekers and employment businesses).

36. The government plans to use the consultation on agency workers, as well as the Director's strategy report, to collect further evidence to inform how to achieve this.

Consultation questions

5) Have you used or are you currently using an umbrella / intermediary?

5 (a) If so, for what reason? e.g. as a work seeker or employment business for payroll purposes. What has your experience been?

6) Do you know of any examples of the benefits and/or problems for agency workers of using an umbrella company or intermediary?

7) Should the extension of the remit of the Employment Agency Standards inspectorate to cover the regulation of certain activies of umbrella companies and intermedaries in the supply of work seekers to a hirer:

i. Be limited to the regulation of the key facts page and provision of information relevant to those facts as part of a work offer by the hirer or employer?

ii. Be aligned to the regulation of the types of employment rights already regulated by EAS under the current legislative framework[5] such as non-payment of wages, deductions from wages which the work seeker has not agreed to, and failure to provide written terms and conditions before the assignment starts?

Please provide reasons for your response.

7) (a) What do you think the impact of ensuring that umbrella companies provide work seekers with a key facts page would be on:

i. the work seeker; and
ii. the recruitment sector ?

7) (b) What do you think the impact of this change would be on:

i. the work seeker?
ii. the recruitment sector; and

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[5] The Employment Agencies Act 1973 (the Act), the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (the Conduct Regulations).

Section 3. Pay Between Assignments

Recommendation: The government should repeal the legislation that allows agency workers to opt out of equal pay entitlements (the 'Swedish Derogation').

In addition the government should consider extending the remit of the EAS Inspectorate to include compliance with the Agency Worker Regulations (which would include enforcement of the Swedish Derogation, if not repealed).

This consultation seeks evidence and views on these issues.

Background

37. Work seekers, once placed by an employment business with a hirer, are entitled under the Agency Worker Regulations 2010 (AWR) to receive 'day one' statutory rights such as the NMW/NLW and holiday pay, daily and weekly rest breaks and a maximum working week of 48 hours on average (unless they have agreed in writing to opt out). In addition, they are entitled to certain contractual rights available to the hirer's employees which include access to facilities (such as canteen, childcare facilities) and access to information on job vacancies. After 12 weeks, they are entitled to the same pay and basic conditions as those who work directly for the hirer including equal pay and any contractual annual leave. After 12 weeks, pregnant agency workers are entitled to be paid for time off to attend ante- natal appointments.

38. The AWR ensure basic equality with employees in the same business. However, there is an exemption **within** the AWR from the right to equal treatment in relation to pay if the worker is employed paid between assignments with a hirer. The exemption, which derives from the EU Agency Workers Directive, is known as the 'Swedish Derogation'.

39. The exemption applies when an agency provides a work seeker with a permanent contract of employment which is based around a series of short-term assignments. Assignments may run back to back or there may be gaps between them. Work seekers on these contracts are not entitled to equal pay with the hirer's employees after 12 weeks when they are on an assignment. However, for sacrificing this entitlement, they are guaranteed a payment for periods when they are between assignments.

40. This type of contract is known as a "pay between assignments" (PBA) contract. Being on such a contract only affects the entitlement to equal pay after 12 weeks. It does not affect a work seeker's entitlements to other provisions under the AWR.

41. Media reporting has suggested that PBA contracts are being used as a legitimate means to pay work seekers a reduced wage compared to permanent employers doing the same work. The review said that:

"There have been numerous examples cited of agency workers forced to accept these contracts either at the start of an assignment or after 11 weeks. While this is unlawful… it is clearly happening. What is more, it is far too easy for employment businesses, and increasingly umbrella companies, to avoid paying workers between assignments anyway."

Consultation considerations

42. There are two considerations here: the proposed repeal of the exemption that allows agency workers to opt out of equal pay entitlements after 12 weeks because they are on PBA contracts (the Swedish Derogation); and the extension of the remit of EAS to include compliance with the AWR and thus enforcement of PBA contracts.

Repeal of the Swedish Derogation

43. The exemption that allows agency workers to opt out of the equal pay requirements of the AWR was introduced to provide flexibility for business while guaranteeing work seekers income. Repealing it would have an impact on both the employment business and work seeker. The Swedish Derogation is supported by many. The CBI said in response to The Review:[6]

'The Swedish Derogation is not a loophole, but a key part of both the EU Directive and the UK deal that brought in the regulations, allowing workers a stable relationship with one agency and… greater security. The government should reject proposals for its abolition'.

44. If employment businesses were no longer able to offer a PBA type of contractual arrangement to work seekers, the existing protections created by PBA contracts in guaranteeing workers a salary between work assignments would be lost. However, permanent contracts would still be available to use, as they were before 2010 when the Agency Worker Regulations (bringing in the Swedish Derogation) came in to force.

44. The review was concerned that the Swedish Derogation arrangement provided an incentive to businesses to use short term employment contracts and/or terminate the employment contract before the end of the first assignment . It noted:

'…. it is far too easy for employment businesses …. to avoid paying workers between assignments anyway… we have also heard examples of recruitment agencies structuring short-term assignments to avoid their liability.' [7]

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[6] http://www.cbi.org.uk/news/labour-market-flexibility-is-a-key-strength-of-the-uk-economy-driving-better-outcomes-for-everyone/

[7] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/627671/good-work-taylor-review-modern-working-practices-rg.pdf (page 59)

45. We do not have robust information on the number of people on PBA contracts. Research published alongside this consultation highlighted some of the problems of pay between assignment contracts, but was based on a small sample that was not randomly selected. The government wants to understand the extent of any problem with the use of the equal pay entitlement opt out, If this consultation discovers widespread evidence of abuse of PBA contracts, then Government's initial view is that repeal of this provision may be appropriate. If abuse appears to be more limited, then stronger enforcement may be sufficient to address the problem. We expect this consultation to help build a better understanding of the volume of work seekers who are either currently using, or have used, PBA contracts.

Enforcement of the Agency Workers Regulations

46. The review was concerned that work seekers are left to take their own cases through the Employment Tribunal system if they feel the law has not been complied with.

47. Extending the remit of EAS to include enforcement of the AWR would mean oversight of the day one statutory and contractual rights and rights accruing after 12 weeks. Enforcement could help ensure that work seekers received these rights such as access to workplace facilities and other basic working conditions such as annual leave. It could provide an avenue of complaint for employment businesses as well as work seekers.

48. The introduction of enforcement may also mean that the exemption that allows agency workers to opt out of equal pay entitlements (the Swedish Derogation) could remain in place. Oversight by EAS would mean that the system could be monitored and there would be state enforcement which would provide an avenue of complaint for work seekers.

49. Regulating the AWR through EAS would move the burden for enforcement of rights from work seekers to an enforcement body. This has the benefit of bringing extra support to individual work seekers to ensure they receive the rights to which they are entitled.

50. Making regulation more systematic would create a burden on employment businesses. For example, hirers could be required to comply with any request for information from EAS in relation to provision of information for both day one and week 12 rights, including information relating to pay of comparable workers.

51. We are seeking views on the impact the enforcement of the Agency Worker Regulations 2010 in terms of day one and week 12 rights coming within the remit of the Employment Agency Standards inspectorate.

52. We are also inviting the submission of evidence on whether there are wider issues associated with access to day one rights or week 12 rights that would support the case for extending regulation.

Consultation questions

8) Have you used or are you currently using a pay between assignments (PBA) contract?

9) In your experience, what are the benefits and any problems associated with working on a PBA contract basis?

10) In your experience, how effective do you think pay between assignments contracts are in supporting workers and work seekers when they are not working?

11) Do you have evidence that there are wider issues (beyond equal pay) with PBA contracts, for example agency workers not being able to access to facilities, rest break, annual leave or job vacancies?

11 (a): Do you believe that that the above issues would justify wider state enforcement?

12) To what extent do you agree that enforcement of the Agency Worker Regulations 2010 should come within the remit of the Employment Agency Standards inspectorate?

Section 4. Consultation questions

Definitions

- **Employment businesses** engage work seekers under terms of business or contract to then work under the supervision of another person('temporary agency working' or 'temping'). Workers under these arrangements are paid through the employment business (sometimes via an umbrella company) rather than by the hiring business they are supplied to.
- **Hirers** are individuals or organisations that contract with an employment business to supply individuals to carry out work on their behalf and where those individuals are supervising or controlling those individuals (excluding contract cleaning and contract security.
- **Intermediaries** are other organisations, such as a third party neutral vendor or master vendor, which facilitate the engagement of a work seeker with a hirer through access of information about a role/work seeker. They may process payments from a hirer to an employment business intended to pay the work seeker.
- **Umbrella companies** arrange to payroll temporary work seekers and can engage work seekers on an overarching contract of employment and the work seeker becomes an employee of the umbrella company.
- **Work seekers** are people or limited company contractors who are contracted by the employment businesses, intermediaries or umbrella companies and who are placed with a third-party to carry out 'temporary agency work'.

Are you (select the appropriate option):

	Respondent type
☐	Business representative organisation/trade body
☐	Central government
☐	Charity or social enterprise
☐	Employer
☐	Individual
☐	Legal representative
☐	Local government
✓	Trade union or staff association

	Respondent type
☐	Other (please describe)

If you are responding as an individual, which best describes your employment status? (select the appropriate option):

Employed	
Self-employed	
Unemployed - Looking for work	
Unemployed – Not looking for work	
Retired	
Not looking for work - other	

If you are an employer, how would you classify your organisation?
If you are an employee or worker, what type of organisation do you work for?

Private sector organisation	
Public sector	
Charity/voluntary sector	
Other (please specify below)	

If you are an employer, how many employees work for your organisation? If you are employed, how many people work for your org

Micro-business (0-9 employees)	
Small business (10-49 employees)	
Medium-sized business (50-249 employees)	
Large-sized business (250+ employees)	

If you represent employers or employees/workers, who do you represent?

A trade union	
An industry or employer association	We represent professional staffing companies
An agency worker interest group	
Other (please specify below)	

Section 1: Improving the transparency of information provided to work seekers

Work seekers are people or limited company contractors contracted by employment businesses, intermediaries or umbrella companies and who are placed with a third-party to carry out 'temporary agency work'.

A key facts page could include the following additional information:

a) Who will be responsible for paying the work seeker , and how they are being engaged;
b) What happens to any money paid to an umbrella company or intermediary before it is paid to the work seeker;
c) How much the work seeker will be paid by the umbrella company or intermediary;
d) What statutory deductions will be made;
e) Any other fees, costs or charges that will be deducted;
f) What additional benefits there are e.g. access to a benefit in kind scheme, childcare vouchers, group insurance policies.

1: To what extent would you agree that a key facts page would support work seekers in making decisions about work?

Agree strongly	Agree slightly	Neither agree nor disagree	Disagree slightly	Disagree strongly	Don't know
	✓				

1 (a): If slightly or strongly agree, what key facts do you think should be made prominent?

There is no evidence to support the view that there is currently an issue in the professional sector regarding a lack of understanding on the part of independent contractors as to who is engaging them, and what their rights are. Therefore, this change is unlikely to have any positive impact in the highly-skilled sector, however, it will have an impact on recruitment firms if they are required to provide this information. This is because contractors are already given contractual documentation setting out the terms of the assignment, and these individuals work through either their own limited companies or make informed choices about the umbrella company they intend to use.

However, we do understand that longer supply chains can lead to confusion/abuse in the lower-skilled/payed sectors, and efforts to increase transparency may be helpful. In the limited experience of APSCo members there seems to be most potential for confusion around which entity employs/engages the worker, and what their rights are.

APSCo has had no recorded complaints from workers not understanding their rights, or deductions made, but we have, on occasion had queries from workers confused by who employs/engages them.

We would strongly urge the Government to consider some form of opt out for limited company contractors, because in the professional sector this proposal would not provide any benefit to independent contractors but would add an administration and cost burden to recruitment firms.

1(b): If slightly or strongly disagree, please provide reasons below

1 (c): Thinking about work seekers and employers in the recruitment sector, would ensuring work seekers are provided with a key facts page have a:

	Significantly positive impact	Small positive impact	Some negative and some positive impact	Small negative impact	Significantly negative impact	No impact	Don't know
Individual work seekers		✓					
Employers in the recruitment sector		✓					

We note here that the question asked about "Employers" in the recruitment sector. Please note a large percentage of workers are not "employed" but engaged. The positive impact to employers/engagers would be because their workers better understood their situation, and there may be fewer issues raised by them.

2: What information would be important to include in a "key facts" page?

It should be noted that the Conduct of Employment Agencies and Employment Businesses Regulations already requires that much of this information be provided.

Regulation 21 states that at the time it offers the work seeker a position it must provide the following information to that work seeker:

a) the identity of the client
b) the start date and duration
c) the role, duties, location, hours, and pay rate or salary and notice period
d) any health and safety issues
e) any experience, training or qualifications necessary
f) any expenses payable

With regard to further information that could be included on a key facts document, our members have suggested the following:

1. An escalation point for any concerns or grievances – we believe one of the most common problems in supply chains is that the worker does not understand who they are employed/engaged by. The EAS should be part of this escalation information.
2. Employment status and rights – provided in a simple format.

The general feeling from our membership is that to be most effective this document should be as simple as possible and not contain too much detail, which might confuse workers.

2 (a) What conditions should be in place to ensure the 'key facts' page is provided and understood by the work seeker before any contractual engagement?

There are two options with regard to the provision of a key facts page – either it is provided when a worker registers with a recruitment firm, or when an assignment is offered and agreed.

In the case of the former, it would not be possible to provide detailed information about deductions at this stage. The recruitment firm would only be able to provide reasonably generic information about supply chains and workers' rights. However, if the obligation is upon agreement of an assignment, then the entity paying the worker would be able to provide meaningful information about the worker's pay and deductions.

It would not be possible to provide a detailed document before an offer has been agreed, as not only would this be unreasonably burdensome upon the engager/employer, but earlier on in the process the worker may not have made up their mind which supply route to take.

This consultation suggests that the employment business should be required to provide this key facts document, however, our members feel very strongly that it should be the entity that pays the worker that is required to provide this document. In situations where there is an umbrella company, another recruitment firm, or other third party involved, it is only the party that pays the worker that will be able to provide the information suggested. For example, a recruitment firm will not know what fees an umbrella company is charging.

Recruitment companies don't always introduce workers to umbrella companies. In fact, we advise our members not to do this. It should be the worker's decision whether or not to work through an umbrella company.

Recruitment companies may have preferred umbrella company suppliers (to ensure compliance), and may ask workers to use one of these – usually the list would consist of 3-5 umbrella companies. In these cases the worker would be told the specifics of margin deductions by the umbrella company – the recruitment firm would not be involved in this discussion.

Therefore, the recruitment firm is very unlikely to know the details of the arrangement between the worker and the umbrella company, and so would be unable to provide detailed information on deductions.

We believe to avoid unnecessary, burdensome administration that where a personal service company contractor opts out of the Conduct of Employment Agencies and Employment Businesses Regulations the requirement to provide a key facts document should not apply.

We would also suggest that this requirement be limited only to situations where umbrella companies or other third party payment solutions are used.

3: Should an employment business be required to ensure that the work seeker understands fully the information being given to them?

Yes		
No	✓	It would not be practical or possible for the engager/employer to be sure that the worker has understood the information provided. A signature can be sought, but this does not ensure understanding. We would suggest that it would be better to ensure the simplicity of the document and content, so it is inherently easy to understand and clearly set out. This could be achieved by limited the information to the most important key facts.
Don't know		

3 (a): If yes, how do you think this should be achieved?

BEIS has estimated the cost of a new information document to be between £33,000 and £1 million over a ten year period. This is based on the assumption that it will take up to one hour to produce a key facts page.

4: Do you feel an hour is an accurate estimate of the time it would take to produce information document for a work seeker?

About right	✓	This is assuming that the responsibility to provide it sits with the entity that pays the worker.
Too high		
Too low	✓	If the requirement to provide this document always sits with the recruitment firm then it will take appreciably longer to collate the information from other parties in the supply chain. Please see response to 2 above.
Don't know		

4 (a): If too high or too low, please provide reasons for your answer below:

Please see comments in box above.

4 (b): Other than the time taken by personnel to produce a "key facts" document, are there other business costs we should be aware of?

Yes (please provide details below)	
No	✓
Don't know	

4 (c): If yes, please provide further details below:

Section 2: Extending the remit of the Employment Agency Standards inspectorate to cover umbrella companies and intermediaries in the supply chain

5: Have you used or are you currently using an umbrella/intermediary?

Yes	APSCo's members do contract with umbrella companies. As an average, the ratio of contractors using umbrella companies as opposed to working through their own personal service companies used to be approximately 25/75. However, with recent behavioural changes following legislation this ratio has changed to approx. 50/50.
No	
Don't know	

(a) If so, for what reason? e.g. as a work seeker or employment business for payroll purposes. What has your experience been?

Our members contract with umbrella companies for the provision of workers to end clients. The reasons for using an umbrella can vary, but should be driven by the worker. Our members can have very good relationships with umbrella companies that provide them with compliant, transparent models, that also look after the workers.

As stated above, usage of umbrellas has increased considerably with the public sector off-payroll changes in April 2017. This increase has been mainly driven by workers moving from PSCs to umbrella companies.

Many professional recruitment firms don't run their own contractor payroll so an umbrella company is the only other option to a personal services company.

Using an umbrella company can be a useful and appropriate alternative to running a personal services company.

6: Do you know of any examples of the benefits and/or problems for agency workers of using an umbrella company or intermediary?

Please provide reasons for your answer below

We have seen real issues in the umbrella sector since late 2016. The introduction of the new off-payroll rules h... seen a proliferation of non-compliant umbrella models. Such models promise workers a significantly enhanced net pay in comparison to income being treated appropriately for PAYE tax and NI purposes.

A large number of our members have encountered issues trying to decipher whether or not a model is compliant, because these less than scrupulous umbrella companies are able to hide what they are doing with the income very efficiently. Usually the use of such models is driven by the worker's desire to take home more pay.

We have also seen many examples of umbrella companies confirming to the recruitment firm that the worker is employed by the umbrella, but in actual fact the worker is self-employed and being paid gross.

There are many very professional, and appropriately behaved umbrella companies in the market place, providing a valuable service to workers. However, our members have reported situations where end clients have knowingly allowed workers to transfer from a compliant umbrella company to non-compliant one (because the worker takes home more pay, and the client wants to keep the individual happy).

7: Should the extension of the remit of the Employment Agency Standards inspectorate to cover the regulation of certain activies of umbrella companies and intermedaries in the supply of work seekers to a hirer; (please tick all relevant boxes)

	Yes	No	Don't know
i. Be limited to the regulation of the key facts page and provision of information relevant to those facts as part of a work offer by the hirer or employer?			
ii. Be aligned to the regulation of the types of employment rights already regulated by EAS under the current legislative framework[8] such as non-payment of wages, deductions from wages which the work seeker has not agreed too, and failure to provide written terms and conditions before the assignment starts?	✓		

Please provide reasons for your answer below

Although there are many professional umbrella companies in the market place, there are equally some that are willing to use non-compliant models. Currently, the umbrella sector is not regulated at all, and our members have told us that they would like to see effective regulation of this sector. They also feel that workers need somewhere to go if they have a problem with an umbrella company, and the EAS, or similar body could be the answer.

Our members did question whether or not the EAS is properly funded and resourced to take on this extended remit. A suggestion was made that perhaps the Government should think about setting up a body that is focused on the protection of workers, rather than using the EAS, which is focused on the regulation of recruitment firms/intermediaries.

The comment was made by a number of our members that the EAS needs to be easier to find on the internet. Candidates wouldn't necessarily know to look at ACAS.

7 (a): Thinking about work seekers and employers in the recruitment sector, would ensuring umbrella companies provide work seekers with a key facts page have a:

	Significantly positive impact	Small positive impact	Some negative and some positive impact	Small negative impact	Significantly negative impact	No impact	Don't know
Individual work seekers	✓						
Employers in the recruitment sector		✓					

[8] The Employment Agencies Act 1973 (the Act), the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (the Conduct Regulations).

Please provide reasons for your answer below

It is our understanding that in the lower paid/skilled sectors much of the confusion workers experience is in regard to who they work for, and who they should take queries to in situations where an umbrella company is involved. Therefore, being provided with a clear and simple document that explains who they work for, and who they should complain to should have a positive impact on workers.

7(b): Thinking about work seekers and employers in the recruitment sector, would extending the regulations of the Employment Agency Standards inspectorate to cover umbrella companies have a:

	Significantly positive impact	Small positive impact	Some negative and some positive impact	Small negative impact	Significantly negative impact	No impact	Don't know
Individual work seekers			✓				
Employers in the recruitment sector	✓						

Please provide reasons for your answer below

Proper regulation of the umbrella sector will in some cases have a negative impact on workers' pay, where they were working through a non-compliant model. However, regulation of the sector will positively impact other, professional umbrella companies, which are behaving appropriately, by levelling the playing field.

Overall, we believe that the whole sector, including workers and all parties in the supply chain will benefit if umbrella companies are properly regulated, because it will raise standards, improve confidence and reduce non-compliance.

Section 3: Ensuring the Swedish Derogation is used appropriately

8: Have you used or are you currently using a pay between assignments contract (PBA)?

Yes	No	Don't know

A very small number of our members have used PBA contracts.

9: In your experience what are the benefits and any problems associated with working on a PBA contract basis?

We should start by stating that this model is almost never used in the professional sector, because workers are usually already earning well in excess of any comparable permanent employee.

We believe that in principle, it is reasonable to balance the right to equal pay against continuity of employment. However, we are aware that these contracts are often exploited, and this is aided by the fact that the PBA regulation is extremely complicated.

APSCo would suggest rather than repealing the regulation, that it be re-designed to genuinely allow workers to opt for real continuity in employment instead higher pay. Importantly, the regulation would need to be properly regulated – potentially by the EAS.

10: In your experience, how effective do you think pay between assignments contracts are in supporting workers and work seekers when they are not working?

Very effective	Fairly effective	Not very effective	Not at all effective	Don't know

11: Do you have evidence that there are wider issues (beyond equal pay) with PBA contracts, for example agency workers not being able to access to facilities, rest break, annual leave or job vacancies?

11 (a): Do you believe that that the above issues would justify wider state enforcement?

Yes	No	Don't know

Please provide reasons for your answer below

12: To what extent do you agree that enforcement of the Agency Worker Regulations 2010 should come within the remit of the Employment Agency Standards Inspectorate?

Agree strongly	Agree slightly	Neither agree nor disagree	Disagree slightly	Disagree strongly	Don't know
✓					

Please provide reasons for your answer below

Generally speaking our members agreed that it makes sense for workers to be able to come to the EAS with concerns/complaints about rights not provided, rather than having to use the tribunal system. However, the EAS does not currently have the power to issue awards to workers, as per the ET system, so where there is a strong evidence of breach, and detriment suffered by the worker, which is unable to be remedied, the worker would still need to go through the ET process.

As we stated in our answer to question 7, we would suggest that a body focused on ensuring workers receive their rights might be more appropriate, rather than using the EAS, which is currently in placed to regulate recruitment firms.

Any further comments

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