# BRC RESPONSE TO BEIS CONSULTATION ON AGENCY WORKERS RECOMMENDATIONS

The BRC welcomes the opportunity to respond to this consultation following the Taylor Review of Modern Working Practices. The BRC is the lead trade association for the entire retail industry. Our industry spans large multiples, independents, high streets and out of town, from online to bricks and mortar, selling goods across all industries from clothing, footwear, food and homeware to electronics, health & beauty, jewellery and everything in between, to increasingly discerning consumers.

This submission provides responses to the most relevant questions in this consultation to the retail industry, namely questions 8-12.

**Use of agency workers and pay between assignments (PBA) contracts in the retail industry**
The nature of retailing requires a flexible labour market that allows employers to respond quickly to changes in demand. Agency workers provide a vital role in supporting the retail industry meet demand at peak periods as well as providing retailers with a ready pool of workers to cover both skill and labour shortages.

The largest agency worker populations in retail are in the distribution and logistics functions. A number of retailers report the shortage of drivers across the UK has meant this role is often filled by agency workers. It is possible that this will be exacerbated in the coming years as the UK leaves the EU. It is important the government recognise the benefit of agency working for both employers and individual, particularly at times of labour and skill shortage.

There are a number of reasons why people chose to work in temporary employment, including agency work.[1] Of those currently in temporary employment, around three in ten report they do not want a permanent role.[2] For many people, making the decision to enter temporary work is a conscious and positive choice.

The Swedish Derogation was introduced when the Agency Worker Regulations came into force in the UK following agreement by the government, employer representatives and trade unions. It is not a loophole. Correct use of pay between assignment arrangements is entirely legitimate and the retail industry does not agree with the conclusion the review came to that the legislation should be repealed. Agency workers can request PBA contracts as they provide stability for workers by maintaining an income between assignments.

Retailers are operating in an extremely competitive environment where costs are rising faster than the market is growing. The decision to use PBA arrangements is taken by the individual company in conjunction with the employment agency or agencies they engage. The industry is concerned that removing PBA would result in additional employment costs at a time when margins are tight and retailers are already trying to manage raising wages, pension contributions and investment in skills via the apprenticeship levy.

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[1] REC, *Flex appeal: why freelancers, contractors and agency workers choose to work this way.*
[2] ONS, Labour Market Statistics, May 2018.

**Evidence of wider issues (beyond equal pay) with PBA contracts**
The retail industry strives to provide the same working environment and facilities to agency workers as direct employees. As set out in the AWR agency workers are entitled to the same basic conditions as direct employees after 12 weeks regardless of whether a PBA contract is being used. For all intents and purposes agency workers in retail are treated in the same way as directly employed colleagues.

A number of BRC members have taken a number of proactive steps to ensure that the agencies they engage, meet their legal obligations and treat their workers with respect. In selecting employment agencies to work with a number of retailers have ethical codes in place to ensure the agency meets a necessary standard for the retailer to engage them. Some retailers audited employment agencies either directly or via a third party while. In addition to this some retailers also have developed codes of practice for agencies which sets out the retailer's expectations of agency behaviours.

**Enforcement of the Agency Worker Regulations**
The retail industry can see benefits of bringing enforcement of the Agency Worker Regulations within the remit of the Employment Agency Standards Inspectorate (EASI) to support agency workers receive the rights they are entitled to. However, given the concerns the retail industry has with the enforcement approach currently adopted by HMRC, the industry would caution against this move at this time.

Expanding the remit of the EASI in this way would require additional resource for the enforcement agency as they would have responsibility for enforcement across the economy rather than just the recruitment sector. Secondly, the retail industry has significant reservations following the shift in approach HMRC have taken over the last 12 months. While the industry supports robust enforcement for the NMW and NLW, HMRC's current approach is not proportionate and has the potential to lead to less flexibility and benefits for retail employees.

Effective and proportionate state-led enforcement must be targeted and intelligence-led. The retail industry supports greater cross agency working between the enforcement bodies and is supportive of the role Director of Labour Market Enforcement. The Director must review the approach currently taken by HMRC as well as reviewing the work of the other enforcement agencies to ensure that enforcement action only follows clear evidence of risk and companies are supported to comply.