

Dept. for Business, Energy & Industrial Strategy
Agency Workers Consultation (EAS)
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8th May 2018

**Submission from the Institute of Interim Management
in response to the Agency Workers Consultation (EAS)**

Introduction

1. This submission is from the Institute of Interim Management ("the Institute", "the IIM", "we", or "us"), a professional membership organisation for independent Interim Managers and Executives ("IMs"), in response to the Agency Workers Consultation.
2. Background information on the Institute and on Interim Management is given in the Appendix attached.

The Issues

Applicable Scope

3. As noted in the introduction to the consultation on agency worker recommendations in response to the Taylor Review published in July 2017, concern has been raised over 'one-sided flexibility' where some employers are transferring risk to workers. In some cases, the report found that this led to workers feeling no benefit from the flexible arrangement.
4. The Taylor Review was clear that labour flexibility should be a mutually beneficial arrangement. It concluded that this would only be possible for flexible workers when they are able to enforce their rights when things go wrong.
5. The Review made several recommendations related to the recruitment sector such that agency workers could have regulated support for the enforcement of relevant employment rights. BEIS, through this consultation are seeking to strike a balance in today's UK labour market between labour flexibility and worker rights and protections plus the information they require.
6. The focus of this consultation is the Agency Worker Regulations and establishing what would be required to satisfy the relevant recommendations made in the Taylor review.
7. The IIM is responding to this consultation on behalf of the interim profession and this continues previous submissions called for by the department previously when legislative changes have been proposed.
8. The IIM notes the continued desire of BEIS to ensure that the UK flexible labour market continues to operate efficiently and fairly. This balance is felt to be out of kilter currently, particularly for those flexible workers who are not able to ensure enforcement of reasonable and fair terms and conditions with some employers.
9. The IIM views the flexible workforce in the UK to operate along a continuum or spectrum, where at one end there are many low skilled workers who either operate in seasonal work areas or undertake

activities where relatively large numbers of workers are required to undertake similar tasks. At the other end of the same spectrum are IMs. These are relatively few in number across the whole profession, are highly experienced executives who are in business on their own account and are perfectly capable of negotiating their own contractual terms with any potential client. They have no desire to be confused in any way with employees. There is no need therefore to enforce any form of employment rights as they are totally irrelevant to the IM business model. IMs contract with clients to deliver assignments with agreed objectives. They usually charge a day rate for their services and senior IMs would certainly not charge less than £500 per diem. IIM surveys show average fees typically 50% above this figure, rising well beyond £1000 per diem. IMs operate in positions that have a significantly positive impact on the UK economy. Clients typically see a return on their investment in an IM of many times the scale of the fees invoiced.

10. IM terms and conditions are very clear about who pays, when, how much and what for. Negotiations can be robust, but the final agreement is a business to business transaction and the parties will not sign this if they are not comfortable with the outcome. Additional regulatory enforcement is largely unnecessary, notwithstanding occasional late invoice payment but this issue exists across the whole UK SME community.
11. Whilst the IIM recognises the general labour market benefit of the consultation proposals, the complex work end of the flexible worker spectrum does not need further protection of this sort. Indeed, it needs to be removed from the remit of any proposed changes given they would be completely inappropriate for the profession. We therefore urge BEIS to ensure that changes proposed will either maintain an opt out for IMs and/or write into the scope a form of words that enables all IMs to fall outside the regulatory remit being considered here. This will avoid considerable potential collateral damage to practicing IMs and enable the government to focus on that part of the workforce that would benefit significantly from its endeavours.
12. It is with the approach outlined above that the IIM has responded to the consultation questions, set out below.

Consultation Paper Questions

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

If you are responding as an individual, which best describes your employment status? (select the appropriate option): **Not applicable**

If you are an employer, how would you classify your organisation? **Not applicable**

If you are an employee or worker, what type of organisation do you work for? **Not applicable**

If you are an employer, how many employees work for your organisation? **Not applicable**

If you are employed, how many people work for your organisation? **Not applicable**

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

A trade union

An industry or employer association.

The IIM is a professional body for senior interim managers and executives in business on their own account (see appendix)

An agency worker interest group

Other (please specify below)

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

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

Neither agree nor disagree. The underlying assumption of the regulations is that the work seeker receives a salary via an employer. IMs do not fall into this category of worker as they are in business on their own account. IMs raise invoices for the agreed services and their businesses are paid against these. This is clear for situations where IMs fall outside IR35 and this works satisfactorily most of the time within the private and not for profit/charity sectors. There is currently an issue within the public sector where the distinction between IMs and other freelancers has been badly blurred, making it very difficult for genuine IMs to be able to differentiate their IR35 status fairly. These regulations, focused on large numbers of people working for relatively low levels of income, assume a salary or wage is universal. It is not. IMs need to retain the ability to opt out of the AWR so that further complexity and professional collateral damage is not introduced to the sector.

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

No further comment

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

No further comment

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 negative impact. IMs obtain a very clear understanding of the terms and conditions they are agreeing to through the negotiation of the assignment contract.

The model used for obtaining work varies, depending upon whether the work is found through an 'Agency' (a 'Provider' in IM sector parlance), or directly through the IM's own business efforts. If the assignment was identified through a provider, the contracting model can vary further so that the IM may contract solely or partly with the provider or directly (partly or wholly) with the client. In any of these options, the IM ensures that all relevant detail is included in the contract for service – a commercial, business to business transaction. A 'key facts' page would simply add further bureaucracy to the engaging process.

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

Not relevant for IMs.

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?

Not relevant for IMs

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

This is done fully during the contract negotiation process for any assignment.

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

Not relevant for IMs

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

Uncertain and any time in respect of IM contracting would be unnecessary.

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

Not relevant for IMs

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?

Not relevant for IMs

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

Not relevant for IMs

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?

The IIM does not directly get involved in this process. However, at time of writing, the institute is not aware of any members using the umbrella company model. Virtually all IMs operate through their own limited company, with a small number (usually accountants or lawyers) using limited liability partnerships. IMs very rarely operate via any form of umbrella organisation across the whole sector in the UK. IMs are usually highly experienced and qualified individuals, who either can do the company administration themselves, or hiring normal accountancy firms to undertake these tasks on their behalf. It is often time rather than lack of understanding that determines this approach and its extent. Invoicing is almost certainly handled by the IM directly.

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

See above response.

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

No, as per Q5 response. IMs are highly unlikely to see any value in using this kind of approach.

7: Should the extension of the remit of the Employment Agency Standards inspectorate to cover the regulation of certain activities of umbrella companies and intermediaries 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? Yes/No/Don't Know
Not relevant for IMs

ii. Be aligned to the regulation of the types of employment rights already regulated by EAS under the current legislative framework 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? Yes/No/Don't Know
Not relevant for IMs. They do not earn wages/salaries & do not work without clear Ts & Cs.

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:

There is no requirement due to the assignment contracting process operated in all cases.

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:

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:

Not relevant for IMs as umbrella companies are very rarely used and the contracting process is thorough.

Section 3: Ensuring the Swedish Derogation is used appropriately

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

The IIM is not aware of any IM who has used this model. The business model used in the sector shows significant risk to the IM as once an assignment has concluded, there is no more client work to invoice for (after the last invoice for the final services provided).

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

The IIM recognises potential benefits to the model for the individual IM but an equivalent approach such as a retainer would require a fresh contract and be for advisory, coaching/mentoring or consultancy work rather than assignment based interim work.

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?

The IIM is not able to offer an opinion as this does not form part of the sector business model.

- 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?

No. The IIM notes that all the points mentioned in this question refer to aspects of employment and employment protection rights, which are not relevant to the practicing professional interim.

- 11 (a): Do you believe that that the above issues would justify wider state enforcement? Y/N/DK
On the contrary. The IIM requests that BEIS does everything possible to ensure IMs can continue to operate in business on their own account without falling foul of these regulations that are clearly not designed to cover IM circumstances. A continuation of an unambiguous 'opt out' for IMs is the most desirable and fair outcome.

- 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

The IIM recognises that government has a duty to regulate areas of the economy where sections of the population may suffer from unfairness in their treatment in the workplace due to lack of either intellectual understanding and/or leverage with the engaging third party. To this end we understand the potential need for many people working in the 'flexible labour market'. However, IMs definitely do not fall into this category.

To ensure that IMs, and the whole UK interim management profession does not suffer unnecessary collateral damage through this well intended legislation, we strongly urge BEIS to ensure that either: a clear opt out remains available for IM professionals in business on their own behalf, or the scope of the regulation is adjusted to specify IMs do not fall in the regulation's remit.

If you have any queries on the foregoing, please do not hesitate to contact us. We would be very pleased to meet with you as necessary. Could you please add our contact details to your mailing list for any future related consultations?

We should be grateful if you would please acknowledge this reply.

Yours sincerely,

Contact Information

APPENDIX

Background to the Institute of Interim Management

The Institute of Interim Management ("the Institute" or "IIM") is a membership organisation for Interim Managers and Executives ("IMs"). It was established in 2001 with the principal aims of championing quality standards and best practice for its members.

The membership is drawn mainly from IMs resident in the UK, although their assignments can take them world-wide. There are also overseas members drawn principally from other EU Member States. The IIM has ongoing relationships with similar organisations internationally, including Italy, Germany, Netherlands, Poland, USA, Canada, Singapore, Czech Republic, Slovakia and Balkan states.

In addition to its website (www.iim.org.uk), the Institute has a significant web presence through its on-line LinkedIn group, Interim Management IIM (www.linkedin.com/groups/Interim-Management-IIM-2339933/about). The group is open to all-comers with an involvement or interest in Interim management, and therefore comprises a cross-section of all participants in the industry.

The on-line group currently has just under 15,000 members, comprising principally IMs (76%) and niche agencies (known in the industry as "Providers") that specialise in 'matching' IMs with clients (11%). The remaining 13% consists of clients, management consultants and others. The on-line group remains the largest group globally dedicated to the Interim management industry.

The Institute conducts annual surveys of the Interim industry, and the 2018 IIM interim management survey is currently 'live' (<https://www.surveymonkey.co.uk/r/iim2018p>). The conduct of the survey is overseen by independent external scrutineers. This annual survey benefits from several thousand responses each year and has become the UK industry standard for 'Provider' service performance assessment.

About Interim Management

Interim management is a proven and highly effective way for organisations to utilise the high end expertise and skills of independent senior and experienced professional managers and subject matter experts.

IMs come from a variety of backgrounds but are mainly highly experienced business executives and are frequently professionally qualified. They deliberately choose to work as independent freelance suppliers of their specific management skills, knowledge and experience to fee paying clients, either for a period of time or for defined scopes of work.

IMs are not temporary employees, but are professionals running micro businesses on their own account, accepting the associated risks and rewards which being in business implies.

IMs are different from management consultants, who limit themselves to gathering information, giving advice and guidance, and recommending action. Whilst IMs can and usually do provide advice and develop solutions, and, indeed, often play a key role in mentoring and coaching the client's staff, their strength and benefit lies in their independent decision making freed from office politics, plus skill in delivering results-driven implementation. Interim executives contract with the client such that the client surrenders line authority for the period of the assignment and within that contracted brief. Contractually and in practice, interims do not come under any form of supervision, direction or control. In practice, the client accepts that the IM carries the power to deliver the contracted assignment objectives.

IMs are a key part of the UK's flexible economy, particularly adding value to organisations in both public and private sectors which require temporary, but high impact, interventions, without involving on-going and unnecessary 'employment' costs for the client such as pensions, or 'disengagement' issues such as wrongful dismissal claims. They are a resource that can be turned on and off like a tap, to the mutual benefit of the client and the IM.

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At one time, the UK's use of IMs matched that of all the other EU Member States in aggregate. Interim management has long been an established feature in The Netherlands and Belgium, but recently, given changes in employment legislation across the EU, the Interim management market in other EU countries is considered to be growing rapidly, particularly in Germany, Poland and France.

Overseas working is common amongst IMs. According to earlier research (*The International Interim Market 2012*) published in March 2012 by Russam GMS (a leading UK Provider) international assignments made up around 11% of the overall activity of UK-based IMs. Out of the 460 IMs who responded to Russam's survey, 80% had completed assignments overseas, and 67% of them had clocked up between five to 10 years of international Interim experience. This proportion has remained fairly stable with time.

The 80% also said that demand for UK Interims overseas is strong because international firms need specialist skills on a temporary basis when they can't resource projects locally. Half of them also said that UK qualifications and the 'British' Interim manager 'brand' was prized highly abroad.

How do IMs operate, and why?

IMs find their assignments in a variety of ways. There are no hard and fast figures, but it is thought that, as a rule of thumb, about 60% of assignments are found by the IMs themselves through contacts in their own personal networks. The remaining 40% of assignments are sourced through Providers, and through introductions from other intermediaries such as banks, venture capitalists, law firms, and accountants.

However, there is anecdotal evidence to suggest that corporate governance requirements dictate that assignments at the most senior levels are more likely to be placed through Providers. This is likely to be true particularly in the public sector, where procurement procedures are more constrained than in either of the other sectors.

Contractual Basis

IMs operate through contracts for services (commercial contracts), rather than contracts of service (employment). IMs form part of (or possibly even lead) the client's management team, and expect to have delegated and to exercise the appropriate line authority required to fulfil their role (including at 'C' level in the public sector). Depending on the circumstances of the client and the assignment, this can include becoming an officer of the company through formal appointment as director and/or company secretary for the duration of the assignment.

It is nevertheless important to understand that IMs are not employees of the client. IMs are typically operating in circumstances which are not 'business-as-usual'. They are usually providing specialist skills and knowledge on an outsourced basis. It is essential that they stand apart from the client's staff, and are perceived by the staff as 'different'. If this is not possible, their ability to provide independent advice and voice controversial opinions is jeopardised, and the growth and development of the organisation will be hindered.

Where the IM finds his/her assignment through their own network or through an intermediary which is not a Provider, the IM will negotiate the contract for services direct with the client. Where a Provider acts as the intermediary, there are two models:

- Usually there will be an 'upper' contract between client and Provider, and a 'lower' contract between Provider and the IM's legal entity. The terms of the two contracts should mirror one another in all material respects (save as to the day-rate fee level), but do not necessarily do so.
- Less frequently but becoming more common, there will be no contract of any sort between the Provider and the IM's PSC or other legal entity. The client will contract direct with the IM's PSC or other legal entity and will pay the IM's day-rate fees direct; the client will have a separate contract with the Provider for its 'introducer's' fees.

Business and Financial Risks

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From a legal standpoint, IMs operate through a variety of legal structures. The Institute's 2013 survey data suggest that the vast majority (88%) of IMs work through their own PSCs. About 7% of IMs operate as sole traders or in partnership, including limited liability partnership ("LLP"), but these tend to be IMs drawn from the accounting and similar professions, where such legal structures are commonplace for all practitioners, not just IMs. The remainder operate through umbrella companies.

IMs are not employees of the organisations to which they provide their services. If an employee makes an error which causes loss to their employer, the employer bears the loss and any cost of rectification. By contrast, if an IM makes an error, the loss and cost of rectification is their responsibility, increasing their financial risk compared with an employee.

Typically IMs have to determine what needs to be done, in the same way and with the same risks as a management consultancy firm if they get the advice wrong to the detriment of the organisation. Having decided what needs to be done, they are responsible for implementation with further financial risks involved, both as to negligence and breach of contract.

IMs therefore understandably protect themselves by operating through the corporate structures mentioned above. In addition, they usually seek further protection through professional indemnity insurance ("PII"). Most clients in both the public, private and not-for-profit sectors insist on such cover as a term of the contract for services, but senior IMs carry it anyway, even if not contractually required.

IMs are also not employees because they do not approach work in the same way. IMs are paid by day rate to their PSC, reflecting the fact that they do not enjoy the benefits and protections of employment. Furthermore, they have no interest in becoming permanent employees – indeed, their business model requires the delivery of outcomes, so that, in effect, an IM's *raison d'être* is to achieve their own 'redundancy' – not the behaviour of a typical employee seeking permanency of employment.

In addition, having made her or himself 'redundant', the IM must then bear the sales and marketing costs of finding their next assignment, and face the real financial risk that this may take some time. It is rare for an IM to move from one assignment to another without a gap between each client. However, keeping this to a minimum is an indication of effective marketing, not a clue to someone being 'employed'.

The Institute's 2013 survey shows that the average assignment lasts 7.2 months, 66% of assignments are completed in less than 12 months, and 94% in less than 24 months. In the last 12 months, the IMs who responded averaged only 161 billable days out of approximately 230 workable days (after allowing for bank and other holidays), and the average time between one assignment ending and the next starting was between two and three months.

In other words, the typical IM's life is one of relatively short term assignments, interspersed with significant periods of 'down time'.

The use of PSCs enables IMs to manage the financial risk of these periods of 'down time'. The receipts from its invoiced sales will be used by the PSC to meet the expenses of running the IM's business, which will normally include payment of a salary to the IM on which PAYE and NI is accounted for. The level of salary will be such that reserves are built up, so that, should a period of down time occur, the expenses of the business, including the sales and marketing cost of obtaining the next assignment, can continue to be met. The retention of profits in this way enables the IM to continue in business and means that they do not claim state benefits.

