

## Extract: Consultation on Agency Worker Recommendations

### 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
<input type="checkbox"/>	Business representative organisation/trade body
<input type="checkbox"/>	Central government
<input type="checkbox"/>	Charity or social enterprise
<input type="checkbox"/>	Employer
<input type="checkbox"/>	Individual
X	Legal representative
<input type="checkbox"/>	Local government
<input type="checkbox"/>	Trade union or staff association

	Respondent type
<input type="checkbox"/>	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 organisation?**

Micro-business (0-9 employees)	
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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	
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?**

**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							

## 2: What information would be important to include in a “key facts” page?

We support moves to increase transparency for individuals engaged by umbrella companies or other intermediaries. Different entities should be clearly and simply explained, together with who the employing entity is, what payments are to be made and by whom, and what deductions will be made and for what reason. We do not consider a “key facts” page is necessary (or desirable) to impose on employment businesses given their existing obligations under the Conduct Regulations to provide terms to work seekers before they provide any services.

## 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?

As noted above in relation to employment businesses, under the Conduct Regulations terms must be provided to work seekers before any services are provided. In relation to umbrella companies and other intermediaries not covered by obligations under the Conduct Regulations, a “key facts” page which explains the different entities and their obligations to the individual and their entitlements should be provided before the individual provides any services.

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

Yes	
No	x
Don't know	

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

**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	
Too high	
Too low	
Don't know	

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

The majority of time incurred by employment businesses in preparing information to provide to agency workers arises in relation to gathering information on assignment details from the hirer. We anticipate this will be the same if similar obligations are imposed on umbrella companies or other intermediaries.

**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	
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?

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

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; (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 <sup>8</sup> 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?	X		

**Please provide reasons for your answer below**

In our view, extending the EAS to regulate certain activities of umbrella companies and intermediaries could have a dramatic effect on compliance with any obligations and rooting out abuses. However, it will be important to ensure the EAS receives sufficient resources to enable it to focus on day to day compliance (which will act as a further deterrent) not just high profile sectors/areas which, in our experience, is the current focus.

**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							

<sup>8</sup> 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**

**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							
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**Please provide reasons for your answer below**

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### 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

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

In our experience, PBAs are rarely used. Where they have been used, PBAs can work effectively to provide support to work seekers in between assignments. Our perception is that work seekers are most likely to be at risk of exploitation when they are engaged on PBA arrangements but are used for long-term assignments. Where work seekers bear the burden of lower hourly rates but never get the benefit of PBA because of the long term nature of the assignment, action should be targeted at identifying these abuses and taking enforcement action. However, it should be noted that such long-term assignments appear to be rare. The average length of a temporary assignment is short: the REC (industry body for the temping industry) states that less than 5% of all assignments in the industry last for 52 weeks or more. Most are simply temping assignments in the normal sense of being short term or seasonal cover.

**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?**

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

Yes	No	Don't know

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**Please provide reasons for your answer below**

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**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**

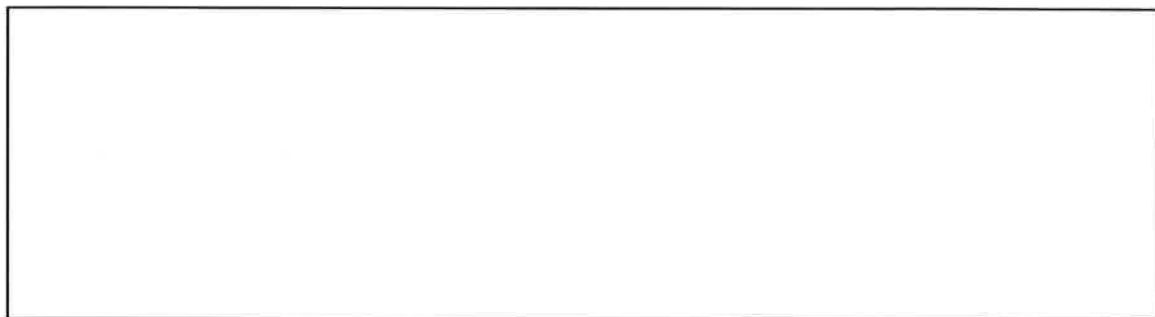
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**Any further comments**

We are concerned that in proposing to abolish PBA contracts, Matthew Taylor appeared to be unaware of the context of the introduction of that exemption into the Agency Workers Regulations 2010. There were three possible exemptions in the EU Directive that could have been introduced, and the UK chose to introduce two of them (the qualifying period, and PBA contracts).

However the adoption of these exemptions was made possible by a negotiated series of concessions made by both industry and trade union sides in a much wider context, which resulted in the Agency Workers: Joint Declaration by Government, the CBI and the TUC, May 2008 (DEP2008-1341). The introduction of PBA contracts was not a "loophole", as the unions now like to refer to it. Rather it was a concession made by the unions in exchange for other concessions made by industry, including relating to the UK's working time opt-outs.

Given the background circumstances, we feel that any proposal now to abolish the PBA contract exemption could be more complex and controversial than realised.



## Good work: the Taylor Review of Modern Working Practices

### Consultation on agency worker recommendations

#### Consultation response from Lewis Silkin LLP

##### About us

Lewis Silkin is a commercial law firm with approximately 60 partners. Our main office is in London, with smaller offices in Oxford, Cardiff, Dublin and Hong Kong. Our Employment, Immigration and Reward division is one of the largest and most highly rated in the UK. This response is submitted on behalf of Lewis Silkin LLP, rather than our clients, based on our experience in practice advising predominantly medium to large-sized employers across a variety of sectors.

We are responding only to those questions where we have specific views based on our experience as a firm of solicitors specialising in employment law.

##### Section 4 Consultation questions

Our responses to specific questions are included in the attached extract from the consultation on agency worker recommendations (the consultation questions posed at Section 4). However, please note our general observations below.

##### Regulatory framework

The recruitment industry is regulated by two main pieces of legislation:

- The Employment Agencies Act 1973 ("the Act")
- The Conduct of Employment Agencies and Employment Business Regulations 2003 ("the Conduct Regulations")

The Agency Workers Regulations 2010 ("the AWR") apply to agency workers who are assigned to do temporary work for hirers through "temporary work agencies" (which can mean an employment business, an umbrella company or an intermediary, but not an employment agency). Under the AWR, agency workers have the right to equal treatment with those recruited directly by the hirer, subject to a 12-week qualifying period.

##### Definition of "work seeker"

Throughout the consultation document, the term "work seeker" is defined as:

*"people or limited company contractors who are contracted by the employment business, intermediaries or umbrella companies and who are placed with a third-party to carry out "temporary agency work".*

The definition used in the consultation document is not consistent with terminology used in the Conduct Regulations (see below).

Under the Conduct Regulations, "work seeker" has a specific meaning and is defined as:

*"a person to whom an employment agency or employment business provides or holds itself out as being capable of providing work-finding services."*

This causes some difficulties in answering a number of the questions posed in the consultation document because employment businesses (and agencies) are already subject to obligations under the Conduct Regulations to provide "work seekers" with certain information (similar to that suggested in the proposed "key facts" page) before starting an assignment with a hirer.

### Improving transparency

We acknowledge the findings of the review that there is a growing complexity in the arrangements for providing temporary agency work and that individuals should be provided with sufficient information to understand who is paying them, what deductions are being made and for what reason.

As mentioned above, employment businesses are already required to comply with existing requirements in relation to "work seekers" (as defined in the Conduct Regulations) to provide (if possible in one document) the following terms to a work seeker before any services are provided. These include:

- Whether the agency worker is or will be employed under a contract of service, or apprenticeship, or a contract for services and the terms of employment or engagement that will apply
- An undertaking that the employment business will pay the individual for all work done regardless of whether it is paid by the hirer
- The length of notice that the individual is required to give and entitled to receive to terminate any contract
- The minimum rate of pay or rate payable
- When payment will be made
- The amount of holiday that will be given

Before introducing a work seeker to a hirer, the employment business must also obtain the following information from a hirer:

- The identity of the hirer and, if applicable, the nature of the hirer's business
- The date on which the work-seeker is required to start and the duration of the work
- The position the hirer wants to fill, including:
  - The type of work that the work-seeker will be required to perform
  - The location at which the work-seeker will have to work
  - The hours that will be worked
  - Any health and safety risks known to the hirer and what steps the hirer has taken to prevent or control such risks
- The experience, training, qualifications and any authorisation which the hirer considers are necessary, or are required by law or by any professional body, for the work seeker to possess to fill the position
- Details of any expenses paid by or to the work seeker

The consultation notes that the "key facts" page will "reaffirm" and "strengthen" the current legal position in a standardised and consistent manner. However, existing obligations on employment businesses under the Conduct Regulations ensure that certain terms (similar to those envisaged in the "key facts" page) are already required to be provided to work seekers before providing any services (see above). In that context, we do not consider that imposing an additional requirement on employment businesses (namely the production of a "key facts" page) is necessary and would be unduly burdensome for employment businesses.

Umbrella companies and intermediaries are not covered by the Conduct Regulations and so are under no equivalent obligations to provide terms or information as are employment businesses. In our experience, issues with regard to the provision and transparency of information tend to arise where there are multiple intermediaries involved because many umbrella companies and intermediaries do not (and are not obliged to) provide equivalent information to individuals as are required by employment businesses under the Conduct Regulations. In our view, measures should be focused on increasing transparency in relation to the provision of information by umbrella companies and other intermediaries.

This could be achieved by:

- (i) imposing the obligation to provide a "key facts" page on umbrella companies and other intermediaries (but not employment businesses); or
- (ii) amending the Conduct Regulations to bring umbrella companies and other intermediaries in scope to provide equivalent terms to work seekers as are currently imposed on employment businesses.

