



Law Society
of Scotland

Consultation Response

Good Work: the Taylor Review of Modern ● Employment Practices – Consultation on Agency Worker Recommendations

May 2018



Introduction

The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

Our Employment Law sub-committee welcomes the opportunity to consider and respond to the Department for Business, Energy and Industrial Strategy consultation: Good Work: the Taylor Review of Modern Employment Practices – Consultation on Agency Worker Recommendations. The sub-committee has the following comments to put forward for consideration.

Consultation questions

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

Agree strongly

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

We would suggest the following details should be provided in a key facts document:

- Hours
- Rate of pay
- Allowances, travel and subsistence rates
- Employer identity
- Work location
- Holiday entitlement
- Notice period



- Contract duration
- Relevant policies and where to find them

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:

Individual work seekers – Small positive impact

Employers in the recruitment sector – Small positive impact

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

We refer to our answer at 1(a) above for important information to include. It should be an obligation to provide a key facts page in writing.

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?

The provision of a key facts page should be part of a pre-contractual protocol between the work seeker and agency.

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

Don't know

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

Too high



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

For most situations a pro forma template should be suitable. If the information required to complete the form is readily available, we anticipate it would normally be possible to complete such a form in half an hour.

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

4(c) If yes, please provide further details

There may be some initial set up costs, for example in developing a standard form, training staff, and seeking legal advice to ensure that the new systems being introduced meet the requirements.

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

No

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

No

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

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

Please provide reasons for your answer

If the remit is too wide it will not be possible to ensure that all issues are fully covered and properly regulated. The extension of the remit of the EAS should be limited to the area of the key facts page, allowing the primary focus of the EAS to be on ensuring payments are properly made.

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:

☒ Individual work seekers – Significantly positive impact

☐ Employers in the recruitment sector – Small positive impact

Please provide reasons for your answers

Providing a key facts page should allow workers to have a good understanding of what they are agreeing to do and with whom.

The benefit to employers is ensuring that their workforce is fully informed and actively accepts the terms. In the instance of any issues or complaints, it would provide evidence of what was initially communicated.



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:

Individual work seekers – Small positive impact

Employers in the recruitment sector – Some negative and some positive impact

Please provide reasons for your answers

It should ensure that standards improve generally. Transparency should improve. However, for employers it would be a further administrative burden and they may believe it is unnecessary

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

No

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

No comment

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

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. This is a broader policy issue, and we do not have any relevant experience.



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

No

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?

Neither agree nor disagree

Please provide reasons for your answers

Enforcement could also be by Employment Tribunal application where workers believe the requirements have been breached. Using the existing tribunal system may be a more cost effective option.

13. Any further comments?

We have no further comments.

